PART 7—ACTIVITIES AND OPERATIONS

Subpart A—National Bank and Federal Savings Association Powers

Subpart B—Corporate Practices

Subpart C—National Bank and Federal Savings Association Operations

Subpart D—Preemption

Subpart E—National Bank Electronic Activities

AUTHORITY: 12 U.S.C. 1 *et seq.*, 25b, 29, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 371, 371d, 481, 484, 1463, 1464, 1465, 1818, 1828(m) and 5412(b)(2)(B).

EFFECTIVE DATE NOTE: At 85 FR 83726, Dec. 22, 2020, the authority citation for part 7 was revised, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 12 U.S.C. 1 *et seq.*, 25b, 29, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 371, 371d, 481, 484, 1462a, 1463, 1464, 1465, 1818, 1828, 3102(b), and 5412(b)(2)(B).

SOURCE: 61 FR 4862, Feb. 9, 1996, unless otherwise noted.

Subpart A—National Bank and Federal Savings Association Powers

§ 7.1000 National bank or Federal savings association ownership of property.

(a) *Investment in real estate necessary for the transaction of business*—(1) *In general.* A national bank or Federal savings association may invest in real estate that is necessary for the transaction of its business.

(2) *Type of real estate.* Real estate investments permissible under this section include:

(i) Premises that are owned and occupied (or to be occupied, if under construction) by the national bank or Federal savings association, or its respective branches or consolidated subsidiaries;

(ii) Real estate acquired and intended, in good faith, for use in future expansion;

(iii) Parking facilities that are used by customers or employees of the national bank or Federal savings association, or its respective branches or consolidated subsidiaries;

(iv) Residential property for the use of officers or employees of the national bank or Federal savings association who are:

(A) Located in remote areas where suitable housing at a reasonable price is not readily available; or

(B) Temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States; and

(v) Property for the use of national bank or Federal savings association officers, employees, or customers, or for the temporary lodging of such persons in areas where suitable commercial lodging is not readily available, provided that the purchase and operation of the property qualifies as a deductible business expense for Federal tax purposes.

(3) *Permissible means of holding.* (i) A national bank or Federal savings association may acquire and hold real estate under this paragraph (a) by any reasonable and prudent means, including ownership in fee, a leasehold estate, or in an interest in a cooperative. The national bank or Federal savings association may hold this real estate directly or through one or more subsidiaries. The national bank or Federal savings association may organize a banking premises subsidiary as a corporation, partnership, or similar entity (*e.g.*, a limited liability company).

(ii) A Federal savings association also may acquire and hold banking premises through a service corporation in accordance with 12 CFR 5.59.

(b) *Fixed assets.* A national bank or Federal savings association may own fixed assets necessary for the transaction of its business, such as fixtures, furniture, and data processing equipment.

(c) *Investment in banking premises*—(1) *Investment limitation.* Twelve CFR 5.37(d)(1)(i) and (d)(3)(i) provide quantitative investment limitations that govern when OCC approval is required for a national bank or Federal savings association to invest in banking premises.

(2) *Premises approval.* (i) A national bank or Federal savings association shall seek approval from the OCC in accordance with 12 CFR 5.37(d).

(ii) A Federal savings association that invests in banking premises through a service corporation shall comply with the quantitative limitations in 12 CFR 5.37(d) and, to the extent applicable, 12 CFR 5.59.

(3) *Option to purchase.* An unexercised option to purchase banking premises or stock in a corporation holding banking premises is not an investment in banking premises. However, a national bank or Federal savings association seeking to exercise such an option must comply with the requirements in 12 CFR 5.37(d).

(d) *Future national bank or Federal savings association expansion.* A national bank or Federal savings association normally should use real estate acquired for future national bank or Federal savings association expansion within five years. After holding such real estate for one year, the national bank or Federal savings association shall state, by resolution of its board of directors or an appropriately authorized bank or savings association official or subcommittee of the board, definite plans for its use. The resolution or other official action must be available for inspection by OCC examiners.

(e) *Transition.* If, on May 18, 2015, a Federal savings association holds an investment in real estate, fixed assets, banking premises, or other real property that complies with the legal requirements in effect prior to May 18, 2015, but would violate any provision of this section or § 5.37, the savings association may continue to hold such investment in accordance with the prior legal requirements. However, a Federal savings association that holds such an investment shall not modify, expand or improve this investment, except for routine maintenance, without the prior approval of the appropriate OCC supervisory office.

[80 FR 28470, May 18, 2015]

EFFECTIVE DATE NOTE: At 85 FR 83726, Dec. 22, 2020, § 7.1000 was redesignated as § 7.1024, and at 85 FR 83729, Dec. 22, 2020, the newly redesignated section was amended by: 1) in paragraphs (c)(2)(i) and (ii) and (d), removing the word ''shall'' and adding in its place the word ''must'' and 2) in paragraph (e), removing the word ''shall'' and adding in its place the word ''may'', effective Apr. 1, 2021. A new § 7.1000 was added, effective Apr. 1, 2021. For the convenience of the user, the added text is set forth as follows:

§ 7.1000 Activities that are part of, or incidental to, the business of banking.

(a) *Purpose.* This section identifies the criteria that the Office of the Comptroller of the Currency (OCC) uses to determine whether an activity is authorized as part of, or incidental to, the business of banking under 12 U.S.C. 24(Seventh) or other statutory authority.

(b) *Restrictions and conditions on activities.* The OCC may determine that activities are permissible under 12 U.S.C. 24(Seventh) or other statutory authority only if they are subject to standards or conditions designed to provide that the activities function as intended and are conducted safely and soundly, in accordance with other applicable statutes, regulations, or supervisory policies.

(c) *Activities that are part of the business of banking.* (1) An activity is permissible for national banks as part of the business of banking if the activity is authorized under 12 U.S.C. 24(Seventh) or other statutory authority. In determining whether an activity that is not specifically included in 12 U.S.C. 24(Seventh) or other statutory authority is part of the business of banking, the OCC considers the following factors:

(i) Whether the activity is the functional equivalent to, or a logical outgrowth of, a recognized banking activity;

(ii) Whether the activity strengthens the bank by benefiting its customers or its business;

(iii) Whether the activity involves risks similar in nature to those already assumed by banks; and

(iv) Whether the activity is authorized for State-chartered banks.

(2) The weight accorded each factor set out in paragraph (c)(1) of this section depends on the facts and circumstances of each case.

(d) *Activities that are incidental to the business of banking.* (1) An activity is authorized

for a national bank as incidental to the business of banking if it is convenient or useful to an activity that is specifically authorized for national banks or to an activity that is otherwise part of the business of banking. In determining whether an activity is convenient or useful to such activities, the OCC considers the following factors:

(i) Whether the activity facilitates the production or delivery of a bank's products or services, enhances the bank's ability to sell or market its products or services, or improves the effectiveness or efficiency of the bank's operations, in light of risks presented, innovations, strategies, techniques and new technologies for producing and delivering financial products and services; and

(ii) Whether the activity enables the bank to use capacity acquired for its banking operations or otherwise avoid economic loss or waste.

(2) The weight accorded each factor set out in paragraph (d)(1) of this section depends on the facts and circumstances of each case.

§ 7.1001 National bank acting as general insurance agent.

Pursuant to 12 U.S.C. 92, a national bank may act as an agent for any fire, life, or other insurance company in any place the population of which does not exceed 5,000 inhabitants. This section is applicable to any office of a national bank when the office is located in a community having a population of less than 5,000, even though the principal office of such bank is located in a community whose population exceeds 5,000.

[85 FR 35374, June 10, 2020]

§ 7.1002 National bank acting as finder.

(a) *General.* It is part of the business of banking under 12 U.S.C. 24(Seventh) for a national bank to act as a finder, bringing together interested parties to a transaction.

(b) *Permissible finder activities.* A national bank that acts as a finder may identify potential parties, make inquiries as to interest, introduce or arrange contacts or meetings of interested parties, act as an intermediary between interested parties, and otherwise bring parties together for a transaction that the parties themselves negotiate and consummate. The following list provides examples of permissible finder activities. This list is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to a national bank's authority to act as a finder.

(1) Communicating information about providers of products and services, and proposed offering prices and terms to potential markets for these products and services;

(2) Communicating to the seller an offer to purchase or a request for information, including forwarding completed applications, application fees, and requests for information to third-party providers;

(3) Arranging for third-party providers to offer reduced rates to those customers referred by the bank;

(4) Providing administrative, clerical, and record keeping functions related to the bank's finder activity, including retaining copies of documents, instructing and assisting individuals in the completion of documents, scheduling sales calls on behalf of sellers, and conducting market research to identify potential new customers for retailers;

(5) Conveying between interested parties expressions of interest, bids, offers, orders, and confirmations relating to a transaction;

(6) Conveying other types of information between potential buyers, sellers, and other interested parties; and

(7) Establishing rules of general applicability governing the use and operation of the finder service, including rules that:

(i) Govern the submission of bids and offers by buyers, sellers, and other interested parties that use the finder service and the circumstances under which the finder service will pair bids and offers submitted by buyers, sellers, and other interested parties; and

(ii) Govern the manner in which buyers, sellers, and other interested parties may bind themselves to the terms of a specific transaction.

(c) *Limitation.* The authority to act as a finder does not enable a national bank to engage in brokerage activities that have not been found to be permissible for national banks.

(d) *Advertisement and fee.* Unless otherwise prohibited by Federal law, a national bank may advertise the availability of, and accept a fee for, the

services provided pursuant to this section.

[67 FR 35004, May 17, 2002]

EFFECTIVE DATE NOTE: At 85 FR 83727, Dec. 22, 2020, §7.1002 was revised, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.1002 National bank and Federal savings association acting as finder.

(a) *In general.* A finder may identify potential parties, make inquiries as to interest, introduce or arrange contacts or meetings of interested parties, act as an intermediary between interested parties, and otherwise bring parties together for a transaction that the parties themselves negotiate and consummate. It is part of the business of banking under 12 U.S.C. 24(Seventh) for a national bank to act as a finder. A Federal savings association may act as a finder to the extent those activities are incidental to the powers expressly authorized by the Home Owners' Loan Act (HOLA) (12 U.S.C. 1461 *et seq*).

(b) *Permissible finder activities*—(1) *National banks.* The following list provides examples of permissible finder activities for national banks. This list is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to a national bank's authority to act as a finder:

(i) Communicating information about providers of products and services, and proposed offering prices and terms to potential markets for these products and services;

(ii) Communicating to the seller an offer to purchase or a request for information, including forwarding completed applications, application fees, and requests for information to third-party providers;

(iii) Arranging for third-party providers to offer reduced rates to those customers referred by the national bank;

(iv) Providing administrative, clerical, and record keeping functions related to the national bank's finder activity, including retaining copies of documents, instructing and assisting individuals in the completion of documents, scheduling sales calls on behalf of sellers, and conducting market research to identify potential new customers for retailers;

(v) Conveying between interested parties expressions of interest, bids, offers, orders, and confirmations relating to a transaction;

(vi) Conveying other types of information between potential buyers, sellers, and other interested parties;

(vii) Establishing rules of general applicability governing the use and operation of the finder service, including rules that:

(A) Govern the submission of bids and offers by buyers, sellers, and other interested parties that use the finder service and the circumstances under which the finder service will pair bids and offers submitted by buyers, sellers, and other interested parties; and

(B) Govern the manner in which buyers, sellers, and other interested parties may bind themselves to the terms of a specific transaction; and

(viii) Acting as an electronic finder pursuant to §7.5002(a)(1).

(2) *Federal savings associations.* The following list provides examples of finder activities that are permissible for Federal savings associations. This list is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to a Federal savings association's incidental powers:

(i) Referring customers to a third party; and

(ii) Providing services and products to customers indirectly through a third-party discount program.

(c) *Limitation.* The authority to act as a finder does not enable a national bank or a Federal savings association to engage in brokerage activities that have not been found to be permissible for national banks or Federal savings associations, respectively.

(d) *Advertisement and fee.* Unless otherwise prohibited by Federal law, a national bank or Federal savings association may advertise the availability of, and accept a fee for, the services provided pursuant to this section.

§ 7.1003 Money lent by a national bank at banking offices or at facilities other than banking offices.

(a) *General.* For purposes of what constitutes a branch within the meaning of 12 U.S.C. 36(j) and 12 CFR 5.30, ''money'' is deemed to be ''lent'' only at the place, if any, where the borrower in-person receives loan proceeds directly from bank funds:

(1) From the lending bank or its operating subsidiary; or

(2) At a facility that is established by the lending bank or its operating subsidiary.

(b) *Receipt of bank funds representing loan proceeds.* Loan proceeds directly from bank funds may be received by a borrower in person at a place that is not the bank's main office and is not licensed as a branch without violating 12 U.S.C. 36, 12 U.S.C. 81 and 12 CFR 5.30, provided that a third party is used to deliver the funds and the place is not established by the lending bank or its operating subsidiary. A third party includes a person who satisfies the requirements of §7.1012(c)(2), or one who customarily delivers loan proceeds directly from bank funds under accepted

industry practice, such as an attorney or escrow agent at a real estate closing.

EFFECTIVE DATE NOTE: At 85 FR 83727, Dec. 22, 2020, §7.1003 was amended, effective Apr. 1, 2021, by:

a. In paragraph (a):

i. Revising the paragraph heading;

ii. Adding the word ''national'' before the word ''bank'' wherever it appears;

b. In paragraph (b):

i. Adding the word ''*national*'' before the word ''*bank*'' in the paragraph heading;

ii. Adding the word ''national'' before the word ''bank'' wherever it appears; and

iii. Adding the word ''national'' before the word ''bank's''; and

c. Adding paragraph (c).

For the convenience of the user, the added and revised text is set forth as follows:

§ 7.1003 Money lent by a national bank at banking offices or at facilities other than banking offices.

(a) *In general.* * * *

(c) *Services on equivalent terms to those offered customers of unrelated banks.* An operating subsidiary owned by a national bank may distribute loan proceeds from its own funds or bank funds directly to the borrower in person at offices the operating subsidiary has established without violating 12 U.S.C. 36, 12 U.S.C. 81 and 12 CFR 5.30 provided that the operating subsidiary provides similar services on substantially similar terms and conditions to customers of unaffiliated entities including unaffiliated banks.

§ 7.1004 Loans originating at facilities other than banking offices of a national bank.

(a) *General.* A national bank may use the services of, and compensate persons not employed by, the bank for originating loans.

(b) *Approval.* An employee or agent of a national bank or of its operating subsidiary may originate a loan at a site other than the main office or a branch office of the bank. This action does not violate 12 U.S.C. 36 and 12 U.S.C. 81 if the loan is approved and made at the main office or a branch office of the bank or at an office of the operating subsidiary located on the premises of, or contiguous to, the main office or branch office of the bank.

EFFECTIVE DATE NOTE: At 85 FR 83727, Dec. 22, 2020, §7.1004 was revised, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.1004 Establishment of a loan production office by a national bank.

(a) *In general.* A national bank or its operating subsidiary may engage in loan production activities at a site other than the main office or a branch of the bank. A national bank or its operating subsidiary may solicit loan customers, market loan products, assist persons in completing application forms and related documents to obtain a loan, originate and approve loans, make credit decisions regarding a loan application, and offer other lending-related services such as loan information and applications at a loan production office without violating 12 U.S.C. 36 and 12 U.S.C. 81, provided that ''money'' is not deemed to be ''lent'' at that site within the meaning of §7.1003 and the site does not accept deposits or pay withdrawals.

(b) *Services of other persons.* A national bank may use the services of, and compensate, persons not employed by the bank in its loan production activities.

§ 7.1005 Credit decisions at other than banking offices of a national bank.

A national bank and its operating subsidiary may make a credit decision regarding a loan application at a site other than the main office or a branch office of the bank without violating 12 U.S.C. 36 and 12 U.S.C. 81, provided that ''money'' is not deemed to be ''lent'' at those other sites within the meaning of §7.1003.

EFFECTIVE DATE NOTE: At 85 FR 83728, Dec. 22, 2020, §7.1003 was removed and reserved, effective Apr. 1, 2021.

§ 7.1006 Loan agreement providing for a national bank share in profits, income, or earnings or for stock warrants.

A national bank may take as consideration for a loan a share in the profit, income, or earnings from a business enterprise of a borrower. A national bank also may take as consideration for a loan a stock warrant issued by a business enterprise of a borrower, provided that the bank does not exercise the warrant. The share or stock warrant may be taken in addition to, or in lieu of, interest. The borrower's obligation to repay principal, however, may not be conditioned upon the value of the profit, income, or earnings of the business enterprise or upon the value of the warrant received.

EFFECTIVE DATE NOTE: At 85 FR 83728, Dec. 22, 2020, § 7.1006 was amended, effective Apr. 1, 2021, by:

a. In the section heading, adding the phrase ''or Federal savings association'' after the phrase ''national bank'';

b. Adding the phrase ''or Federal savings association'' after the phrase ''national bank'' wherever it appears in the first and second sentences; and

c. Adding the phrase ''or savings association'' after the phrase ''provided that the bank'' in the second sentence.

§ 7.1007 National Bank Acceptances.

A national bank is not limited in the character of acceptances it may make in financing credit transactions. Bankers' acceptances may be used for such purpose, since the making of acceptances is an essential part of banking authorized by 12 U.S.C. 24.

§ 7.1008 Preparation by a national bank of income tax returns for customers or public.

A national bank may assist its customers in preparing their tax returns, either gratuitously or for a fee.

[68 FR 70131, Dec. 17, 2003]

§ 7.1009 National bank holding collateral stock as nominee.

A national bank that accepts stock as collateral for a loan may have such stock transferred to the bank's name as nominee.

EFFECTIVE DATE NOTE: At 85 FR 83728, Dec. 22, 2020, § 7.1009 was removed and reserved, effective Apr. 1, 2021.

§ 7.1010 Postal service by national bank.

(a) *General.* A national bank may maintain and operate a postal substation on banking premises and receive income from it. The services performed by the substation are those permitted under applicable rules of the United States Postal Service and may include meter stamping of letters and packages, and the sale of related insurance. The bank may advertise, develop, and extend the services of the substation for the purpose of attracting customers to the bank.

(b) *Postal regulations.* A national bank operating a postal substation shall do so in accordance with the rules and regulations of the United States Postal Service. The national bank shall keep the books and records of the substation separate from those of other banking operations. Under 39 U.S.C. 404 and any regulations issued pursuant thereto, the United States Postal Service may inspect the books and records of the substation.

EFFECTIVE DATE NOTE: At 85 FR 83728, Dec. 22, 2020, § 7.1010 was revised, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.1010 Postal services by national banks and Federal savings associations.

(a) *In general.* A national bank or Federal savings association may provide postal services and receive income from those services. The services performed are those permitted under applicable rules of the United States Postal Service and may include meter stamping of letters and packages and the sale of related insurance. The national bank or Federal savings association may advertise, develop, and extend the services to attract customers to the institution.

(b) *Postal regulations.* A national bank or Federal savings association providing postal services must do so in accordance with the rules and regulations of the United States Postal Service. The national bank or Federal savings association must keep the books and records of the postal services separate from those of other banking operations. Under 39 U.S.C. 404 and regulations issued under that statute (*see* 39 CFR chapter I), the United States Postal Service may inspect the books and records pertaining to the postal services.

§ 7.1011 National bank acting as payroll issuer.

A national bank may disburse to an employee of a customer payroll funds deposited with the bank by that customer. The bank may disburse those funds by direct payment to the employee, by crediting an account in the employee's name at the disbursing bank, or by forwarding funds to another institution in which an employee maintains an account.

§ 7.1012 Establishment, operation, or use of a messenger service by a national bank.

(a) *Definition.* For purposes of this section, a ''messenger service'' means any service, such as a courier service or armored car service, used by a national bank and its customers to pick up from, and deliver to, specific customers at locations such as their

homes or offices, items relating to transactions between the bank and those customers.

(b) *Pick-up and delivery of items constituting nonbranching activities.* Pursuant to 12 U.S.C. 24 (Seventh), a national bank may establish and operate a messenger service, or use, with its customers, a third party messenger service. The bank may use the messenger service to transport items relevant to the bank's transactions with its customers without regard to the branching limitations set forth in 12 U.S.C. 36, provided the service does not engage in branching functions within the meaning of 12 U.S.C. 36(j). In establishing or using such a facility, the national bank may establish terms, conditions, and limitations consistent with this section and appropriate to assure compliance with safe and sound banking practices.

(c) *Pick-up and delivery of items constituting branching functions by a messenger service established by a third party.* (1) Pursuant to 12 U.S.C. 24 (Seventh), a national bank and its customers may use a messenger service to pick up from, and deliver to customers items that relate to branching functions within the meaning of 12 U.S.C. 36, provided the messenger service is established and operated by a third party. In using such a facility, a national bank may establish terms, conditions, and limitations, consistent with this section and appropriate to assure compliance with safe and sound banking practices.

(2) The OCC reviews whether a messenger service is established by a third party on a case-by-case basis, considering all of the circumstances. However, a messenger service is clearly established by a third party if:

(i) A party other than the national bank owns or rents the messenger service and its facilities and employs the persons who provide the service;

(ii)(A) The messenger service retains the discretion to determine in its own business judgment which customers and geographic areas it will serve; or

(B) If the messenger service and the bank are under common ownership or control, the messenger service actually provides its services to the general public, including other depository institutions, and retains the discretion to determine in its own business judgment which customers and geographic areas it will serve;

(iii) The messenger service maintains ultimate responsibility for scheduling, movement, and routing;

(iv) The messenger service does not operate under the name of the bank, and the bank and the messenger service do not advertise, or otherwise represent, that the bank itself is providing the service, although the bank may advertise that its customers may use one or more third party messenger services to transact business with the bank;

(v) The messenger service assumes responsibility for the items during transit and for maintaining adequate insurance covering thefts, employee fidelity, and other in-transit losses; and

(vi) The messenger service acts as the agent for the customer when the items are in transit. The bank deems items intended for deposit to be deposited when credited to the customer's account at the bank's main office, one of its branches, or another permissible facility, such as a back office facility that is not a branch. The bank deems items representing withdrawals to be paid when the items are given to the messenger service.

(3) A national bank may defray all or part of the costs incurred by a customer in transporting items through a messenger service. Payment of those costs may only cover expenses associated with each transaction involving the customer and the messenger service. The national bank may impose terms, conditions, and limitations that it deems appropriate with respect to the payment of such costs.

(d) *Pickup and delivery of items pertaining to branching activities where the messenger service is established by the national bank.* A national bank may establish and operate a messenger service to transport items relevant to the bank's transactions with its customers if such transactions constitute one or more branching functions within the meaning of 12 U.S.C. 36(j), provided the bank receives approval to establish a branch pursuant to 12 CFR 5.30.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60098, Nov. 4, 1999]

EFFECTIVE DATE NOTE: At 85 FR 83728, Dec. 22, 2020, §7.1012 was amended, effective Apr. 1, 2021, by:

a. In paragraph (c)(1), removing the phrase ''pick up from, and deliver'' and adding in its place the phrase ''pick up from and deliver''; and

b. In paragraph (c)(2)(vi), removing the words ''back office'' and adding in its place the word ''back-office''.

§ 7.1014 Sale of money orders at nonbanking outlets by a national bank.

A national bank may designate bonded agents to sell the bank's money orders at nonbanking outlets. The responsibility of both the bank and its agent should be defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent. The bank's agents need not report on sales and transmit funds from the nonbanking outlets more frequently than at the end of the third business day following receipt of the funds.

§ 7.1015 National bank receipt of stock from a small business investment company.

A national bank may purchase the stock of a small business investment company (SBIC) (*see* 15 U.S.C. 682(b)), and may receive the benefits of such stock ownership (*e.g.*, stock dividends). The receipt and retention of a dividend by a national bank from an SBIC in the form of stock of a corporate borrower of the SBIC is not a purchase of stock within the meaning of 12 U.S.C. 24 (Seventh).

EFFECTIVE DATE NOTE: At 85 FR 83728, Dec. 22, 2020, §7.1015 was revised, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.1015 National bank and Federal savings association investments in small business investment companies.

(a) *National banks.* A national bank may invest in a small business investment company (SBIC) or in any entity established solely to invest in SBICs, including purchasing the stock of a SBIC, subject to appropriate capital limitations (*see e.g.*, 15 U.S.C. 682(b)), and may receive the benefits of such stock ownership (*e.g.*, stock dividends). The receipt and retention of a dividend by a national bank from a SBIC in the form of stock of a corporate borrower of the SBIC is not a purchase of stock within the meaning of 12 U.S.C. 24(Seventh).

(b) *Federal savings associations.* Federal savings associations may invest in a SBIC or in any entity established solely to invest in SBICs as provided in 12 CFR 160.30.

(c) *Qualifying SBIC.* A national bank or Federal savings association may invest in a SBIC that is either:

(1) Already organized and has obtained a license from the Small Business Administration; or

(2) In the process of being organized.

(d) *SBIC wind-down.* A national bank or Federal savings association may retain an interest in a SBIC that has voluntarily surrendered its license to operate as a SBIC in accordance with 13 CFR 107.1900 and does not make any new investments (other than investments in cash equivalents, which, for the purposes of this paragraph (d), means high quality, highly liquid investments whose maturity corresponds to the issuer's expected or potential need for funds and whose currency corresponds to the issuer's assets) after such voluntary surrender.

§ 7.1016 Independent undertakings issued by a national bank to pay against documents.

(a) *General authority.* A national bank may issue and commit to issue letters of credit and other independent undertakings within the scope of the applicable laws or rules of practice recognized by law.[1] Under such letters of credit

[1] Examples of such laws or rules of practice include: The applicable version of Article 5 of the Uniform Commercial Code (UCC) (1962, as amended 1990) or revised Article 5 of the UCC (as amended 1995) (available from West Publishing Co., 1/800/328–4880); the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce (ICC) Publication No. 600 or any applicable prior version) (available from ICC Publishing, Inc., 212/206–1150; *http://www.iccwbo.org*); the Supplements to UCP 500 & 600 for Electronic Presentation (eUCP v. 1.0 & 1.1) (Supplements to the Uniform Customs and Practices for Documentary Credits for Electronic Presentation) (available from ICC Publishing, Inc., 212/206–1150; *http://www.iccwbo.org)* International Standby Practices (ISP98) (ICC Publication No. 590) (available from the Institute of International Banking Law & Practice, 301/869–9840; *http://www.iiblp.org*); the United Nations Convention on Independent Guarantees and Standby Letters of Credit (adopted by the U.N. General Assembly in 1995 and signed by the U.S. in 1997) (available from the U.N. Commission on International Trade Law, 212/963–5353); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary

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and other independent undertakings, the bank's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the applicant and the beneficiary. A national bank may also confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

(b) *Safety and soundness considerations*—(1) *Terms.* As a matter of safe and sound banking practice, banks that issue independent undertakings should not be exposed to undue risk. At a minimum, banks should consider the following:

(i) The independent character of the undertaking should be apparent from its terms (such as terms that subject it to laws or rules providing for its independent character);

(ii) The undertaking should be limited in amount;

(iii) The undertaking should:

(A) Be limited in duration; or

(B) Permit the bank to terminate the undertaking either on a periodic basis (consistent with the bank's ability to make any necessary credit assessments) or at will upon either notice or payment to the beneficiary; or

(C) Entitle the bank to cash collateral from the applicant on demand (with a right to accelerate the applicant's obligations, as appropriate); and

(iv) The bank either should be fully collateralized or have a post-honor right of reimbursement from the applicant or from another issuer of an independent undertaking. Alternatively, if the bank's undertaking is to purchase documents of title, securities, or other valuable documents, the bank should obtain a first priority right to realize on the documents if the bank is not otherwise to be reimbursed.

(2) *Additional considerations in special circumstances.* Certain undertakings require particular protections against credit, operational, and market risk:

(i) In the event that the undertaking is to honor by delivery of an item of value other than money, the bank should ensure that market fluctuations that affect the value of the item will not cause the bank to assume undue market risk;

(ii) In the event that the undertaking provides for automatic renewal, the terms for renewal should be consistent with the bank's ability to make any necessary credit assessments prior to renewal;

(iii) In the event that a bank issues an undertaking for its own account, the underlying transaction for which it is issued must be within the bank's authority and comply with any safety and soundness requirements applicable to that transaction.

(3) *Operational expertise.* The bank should possess operational expertise that is commensurate with the sophistication of its independent undertaking activities.

(4) *Documentation.* The bank must accurately reflect the bank's undertakings in its records, including any acceptance or deferred payment or other absolute obligation arising out of its contingent undertaking.

(c) *Coverage.* An independent undertaking within the meaning of this section is not subject to the provisions of § 7.1017.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60099, Nov. 4, 1999; 68 FR 70131, Dec. 17, 2003; 73 FR 22241, Apr. 24, 2008]

EFFECTIVE DATE NOTE: At 85 FR 83728, Dec. 22, 2020, § 7.1016 was amended, effective Apr. 1, 2021, by:

a. Revising the section heading and paragraphs (a) and (b)(1) introductory text;

b. In paragraphs (b)(1)(iii)(B) and (C), (b)(2)(iii), and (b)(3) and (4), removing the word ''bank'' and adding in its place the phrase ''national bank or Federal savings association'';

c. In paragraphs (b)(1)(iii)(B), (b)(2)(iii), and (b)(4), adding the phrase ''or savings association's'' after the word ''bank's'';

d. Revising paragraphs (b)(1)(iv) and (b)(2)(i); and

e. In paragraph (b)(2)(ii), removing the word ''bank's'' and adding in its place the phrase ''national bank's or Federal savings association's''.

For the convenience of the user, the revised text is set forth as follows:

Credits (ICC Publication No. 525) (available from ICC Publishing, Inc., 212/206–1150; *http://www.iccwbo.org*); as any of the foregoing may be amended from time to time.

§ 7.1016 Independent undertakings issued by a national bank or Federal savings association to pay against documents.

(a) *In general.* A national bank or Federal savings association may issue and commit to issue letters of credit and other independent undertakings within the scope of applicable laws or rules of practice recognized by law.[1] Under such independent undertakings, the national bank's or Federal savings association's obligation to honor depends upon the presentation of specified documents and not upon nondocumentary conditions or resolution of questions of fact or law at issue between the applicant and the beneficiary. A national bank or Federal savings association also may confirm or otherwise undertake to honor or purchase specified documents upon their presentation under another person's independent undertaking within the scope of such laws or rules.

(b) * * * (1) *Terms.* As a matter of safe and sound banking practice, national banks and Federal savings associations that issue independent undertakings should not be exposed to undue risk. At a minimum, national banks and Federal savings associations should consider the following:

* * * * *

(iv) The national bank or Federal savings association either should be fully collateralized or have a post-honor right of reimbursement from the applicant or from another issuer of an independent undertaking. Alternatively, if the national bank's or Federal savings association's undertaking is to purchase documents of title, securities, or other valuable documents, the bank or savings association should obtain a first priority right to realize on the documents if the bank or savings association is not otherwise to be reimbursed.

[1] Examples of such laws or rules of practice include: The applicable version of Article 5 of the Uniform Commercial Code (UCC) (1962, as amended 1990) or revised Article 5 of the UCC (as amended 1995); the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce (ICC) Publication No. 600 or any applicable prior version); the Supplements to UCP 500 & 600 for Electronic Presentation (eUCP v. 1.0, 1.1, & 2.0) (Supplements to the Uniform Customs and Practices for Documentary Credits for Electronic Presentation); International Standby Practices (ISP98) (ICC Publication No. 590); the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (adopted by the U.N. General Assembly in 1995 and signed by the U.S. in 1997); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 725).

(2) * * *

(i) In the event that the undertaking is to honor by delivery of an item of value other than money, the national bank or Federal savings association should ensure that market fluctuations that affect the value of the item will not cause the bank or savings association to assume undue market risk;

* * * * *

§ 7.1017 National bank as guarantor or surety on indemnity bond.

(a) A national bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor (including, pursuant to 12 CFR 28.4, guaranteeing the deposits and other liabilities of its Edge corporations and Agreement corporations and of its corporate instrumentalities in foreign countries), if:

(1) The bank has a substantial interest in the performance of the transaction involved (for example, a bank, as fiduciary, has a sufficient interest in the faithful performance by a cofiduciary of its duties to act as surety on the bond of such cofiduciary); or

(2) The transaction is for the benefit of a customer and the bank obtains from the customer a segregated deposit that is sufficient in amount to cover the bank's total potential liability. A segregated deposit under this section includes collateral:

(i) In which the bank has perfected its security interest (for example, if the collateral is a printed security, the bank must have obtained physical control of the security, and, if the collateral is a book entry security, the bank must have properly recorded its security interest); and

(ii) That has a market value, at the close of each business day, equal to the bank's total potential liability and is composed of:

(A) Cash;

(B) Obligations of the United States or its agencies;

(C) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(D) Notes, drafts, or bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(iii) That has a market value, at the close of each business day, equal to 110

percent of the bank's total potential liability and is composed of obligations of a State or political subdivision of a State.

(b) In addition to paragraph (a) of this section, a national bank may guarantee obligations of a customer, subsidiary or affiliate that are financial in character, provided the amount of the bank's financial obligation is reasonably ascertainable and otherwise consistent with applicable law.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60099, Nov. 4, 1999; 73 FR 22241, Apr. 24, 2008]

§ 7.1018 National bank automatic payment plan accounts.

A national bank may, for the benefit and convenience of its savings depositors, adopt an automatic payment plan under which a savings account will earn dividends at the current rate paid on regular savings accounts. The depositor, upon reaching a previously designated age, receives his or her accumulated savings and earned interest in installments of equal amounts over a specified period.

§ 7.1020 Purchase of open accounts by a national bank.

(a) *General.* The purchase of open accounts is a part of the business of banking and within the power of a national bank.

(b) *Export transactions.* A national bank may purchase open accounts in connection with export transactions; the accounts should be protected by insurance such as that provided by the Foreign Credit Insurance Association and the Export-Import Bank.

§ 7.1021 National bank participation in financial literacy programs.

A national bank may participate in a financial literacy program on the premises of, or at a facility used by, a school. The school premises or facility will not be considered a branch of the bank if:

(a) The bank does not establish and operate the school premises or facility on which the financial literacy program is conducted; and

(b) The principal purpose of the financial literacy program is educational. For example, a program is educational if it is designed to teach students the principles of personal economics or the benefits of saving for the future, and is not designed for the purpose of profit-making.

[66 FR 34791, July 2, 2001]

EFFECTIVE DATE NOTE: At 85 FR 83729, Dec. 22, 2020, §7.1021 was revised, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.1021 Financial literacy programs not branches of national banks.

A financial literacy program is a program the principal purpose of which is to be educational for members of the community. The premises of, or a facility used by, a school or other organization at which a national bank participates in a financial literacy program is not a branch for purposes of 12 U.S.C. 36 provided the bank does not establish and operate the premises or facility. The OCC considers establishment and operation in this context on a case by case basis, considering the facts and circumstances. However, the premises or facility is not a branch of the national bank if the safe harbor test in §7.1012(c)(2) applicable to messenger services established by third parties is satisfied. The factor discussed in §7.1012(c)(2)(i) can be met if bank employee participation in the financial literacy program consists of managing the program or conducting or engaging in financial education activities provided the school or other organization retains control over the program and over the premises or facilities at which the program is held.

§ 7.1022 National banks' authority to buy and sell exchange, coin, and bullion.

(a) In this section, *industrial or commercial metal* means metal (including an alloy) in a physical form primarily suited to industrial or commercial use, for example, copper cathodes.

(b) *Scope of authorization.* Section 24(Seventh) of the National Bank Act authorizes national banks to buy and sell exchange, coin, and bullion. Industrial or commercial metal is not exchange, coin, and bullion within the meaning of this authorization.

(c) *Buying and selling metal as part of or incidental to the business of banking.* Section 24(Seventh) authorizes national banks to engage in activities that are part of, or incidental to, the business of banking. Buying and selling industrial or commercial metal for the purpose of dealing or investing in that metal is not part of or incidental to the

business of banking pursuant to section 24(Seventh). Accordingly, national banks may not acquire industrial or commercial metal for purposes of dealing or investing.

(d) *Other authorities not affected.* This section shall not be construed to preclude a national bank from acquiring or selling metal in connection with its incidental authority to foreclose on loan collateral, compromise doubtful claims, or avoid loss in connection with a debt previously contracted. This section also shall not be construed to preclude a national bank from buying and selling physical metal to hedge a derivative for which that metal is the reference asset so long as the amount of the physical metal used for hedging purposes is nominal.

(e) *Nonconforming holdings.* National banks that hold industrial or commercial metal as a result of dealing or investing in that metal shall dispose of such metal as soon as practicable, but not later than one year from the effective date of this regulation. The OCC may grant up to four separate one-year extensions to dispose of industrial or commercial metal if a national bank makes a good faith effort to dispose of the metal and retention of the metal for an additional year is not inconsistent with the safe and sound operation of the bank.

[81 FR 96360, Dec. 30, 2016]

EFFECTIVE DATE NOTE: At 85 FR 83729, Dec. 22, 2020, §7.1022 was amended, effective Apr. 1, 2021, by:

a. In paragraph (d), removing the word ''shall'' and adding in its place the word ''may'' wherever it appears; and

b. In paragraph (e), in the first sentence, removing the word ''shall'' and adding in its place the word ''must'' and removing the phrase ''the effective date of this regulation'' and adding in its place the phrase ''April 1, 2018''.

§ 7.1023 Federal savings associations, prohibition on industrial or commercial metal dealing or investing.

(a) In this section, *industrial or commercial metal* means metal (including an alloy) in a physical form primarily suited to industrial or commercial use, for example, copper cathodes.

(b) Federal savings associations may not deal or invest in industrial or commercial metal.

(c) *Other authorities not affected.* This section shall not be construed to preclude a federal savings association from acquiring or selling metal in connection with its authority to foreclose on loan collateral, compromise doubtful claims, or avoid loss in connection with a debt previously contracted.

(d) *Nonconforming holdings.* Federal savings associations that hold industrial or commercial metal as a result of dealing or investing in that metal shall dispose of such metal as soon as practicable, but not later than one year from the effective date of this regulation. The OCC may grant up to four separate one-year extensions to dispose of industrial or commercial metal if a federal savings association makes a good faith effort to dispose of the metal and retention of the metal for an additional year is not inconsistent with safe and sound operation of the association.

[81 FR 96360, Dec. 30, 2016]

EFFECTIVE DATE NOTE: At 85 FR 83729, Dec. 22, 2020, §7.1023 was amended, effective Apr. 1, 2021, by:

a. In paragraph (c), removing the word ''shall'' and adding in its place the word ''may'' and removing the words ''federal savings association'' and adding in its place the words ''Federal savings association''; and

b. In paragraph (d):

i. In the first sentence:

A. Removing the word ''shall'' and adding in its place the word ''must'';

B. Removing the phrase ''the effective date of this regulation'' and adding in its place the phrase ''April 1, 2018''; and

ii. Removing, in the second sentence, the phrase ''federal savings association'' and adding in its place the phrase ''Federal savings association''.

§ 7.1025 Tax equity finance transactions by national banks and Federal savings associations.

(a) *Tax equity finance transactions.* A national bank or Federal savings association may engage in a tax equity finance transaction pursuant to 12 U.S.C. 24(Seventh) and 1464 only if the transaction is the functional equivalent of a loan, as provided in paragraph (c) of this section, and the transaction satisfies applicable conditions in paragraph (d) of this section. The authority to engage in tax equity finance transactions under this section is pursuant to 12

U.S.C. 24(Seventh) and 1464 lending authority and is separate from, and does not limit, other investment authorities available to national banks and Federal savings associations.

(b) *Definitions.* For purposes of this section:

(1) *Appropriate OCC supervisory office* means the OCC office that is responsible for the supervision of a national bank or Federal savings association, as described in subpart A of 12 CFR part 4;

(2) *Capital and surplus* has the same meaning that this term has in 12 CFR 32.2.

(3) *Tax equity finance transaction* means a transaction in which a national bank or Federal savings association provides equity financing to fund a project or projects that generate tax credits or other tax benefits and the use of an equity-based structure allows the transfer of those credits and other tax benefits to the national bank or Federal savings association.

(c) *Functional equivalent of a loan.* A tax equity finance transaction is the functional equivalent of a loan if:

(1) The structure of the transaction is necessary for making the tax credits or other tax benefits available to the national bank or Federal savings association;

(2) The transaction is of limited tenure and is not indefinite, including retaining a limited investment interest that is required by law to obtain continuing tax benefits or needed to obtain the expected rate of return;

(3) The tax benefits and other payments received by the national bank or Federal savings association from the transaction repay the investment and provide the expected rate of return at the time of underwriting;

(4) Consistent with paragraph (c)(3) of this section, the national bank or Federal savings association does not rely on appreciation of value in the project or property rights underlying the project for repayment;

(5) The national bank or Federal savings association uses underwriting and credit approval criteria and standards that are substantially equivalent to the underwriting and credit approval criteria and standards used for a traditional commercial loan;

(6) The national bank or Federal savings association is a passive investor in the transaction and is unable to direct the affairs of the project company; and

(7) The national bank or Federal savings association appropriately accounts for the transaction initially and on an ongoing basis and has documented contemporaneously its accounting assessment and conclusion.

(d) *Conditions on tax equity finance transactions.* A national bank or Federal savings association may engage in tax equity finance transactions only if:

(1) The national bank or Federal savings association cannot control the sale of energy, if any, from the project;

(2) The national bank or Federal savings association limits the total dollar amount of tax equity finance transactions undertaken pursuant to this section to no more than five percent of its capital and surplus, unless the OCC determines, by written approval of a written request by the national bank or Federal savings association to exceed the five percent limit, that a higher aggregate limit will not pose an unreasonable risk to the national bank or Federal savings association and that the tax equity finance transactions in the national bank's or Federal savings association's portfolio will not be conducted in an unsafe or unsound manner; provided, however, that in no case may a national bank or Federal savings association's total dollar amount of tax equity finance transactions undertaken pursuant to this section exceed 15 percent of its capital and surplus;

(3) The national bank or Federal savings association has provided written notification to the appropriate OCC supervisory office, prior to engaging in each tax equity finance transaction that includes its evaluation of the risks posed by the transaction;

(4) The national bank or Federal savings association can identify, measure, monitor, and control the associated risks of its tax equity finance transaction activities individually and as a whole on an ongoing basis to ensure that such activities are conducted in a safe and sound manner; and

(5) The national bank or Federal savings association obtains a legal opinion or has other good faith, reasoned bases

for making a determination that tax credits or other tax benefits are available before engaging in a tax equity finance transaction.

(e) *Applicable legal requirements.* The transaction is subject to the substantive legal requirements of a loan, including the lending limits prescribed by 12 U.S.C. 84 and 12 U.S.C. 1464(u), as appropriate, as implemented by 12 CFR part 32, and if the active investor or project sponsor of the transaction is an affiliate of the bank, to the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c–1, as implemented by 12 CFR part 223.

EFFECTIVE DATE NOTE: At 85 FR 83729, Dec. 22, 2020, §7.1025 was added, effective Apr. 1, 2021.

§ 7.1026 National bank and Federal savings association payment system memberships.

(a) *In general.* National banks and Federal savings associations may become members of payment systems, subject to the requirements of this section.

(b) *Definitions.* As used in this section:

(1) *Appropriate OCC supervisory office* means the OCC office that is responsible for the supervision of a national bank or Federal savings association, as described in subpart A of 12 CFR part 4;

(2) *Member* includes a national bank or Federal savings association designated as a ''member,'' or ''participant,'' or other similar role by a payment system, including by a payment system that requires the national bank or Federal savings association to share in operational losses or maintain a reserve with the payment system to offset potential liability for operational losses. This definition includes indirect members only if they agree to be bound by the rules of the payment system and the rules of the payment system indicate indirect members are covered;

(3) *Open-ended liability* refers to liability for operational losses that is not capped under the rules of the payment system and includes indemnifications of third parties provided as a condition of membership in the payment system;

(4) *Operational loss* means a charge resulting from sources other than defaults by other members of the payment system. Examples of operational losses include losses that are due to: Employee misconduct, fraud, misjudgment, or human error; management failure; information systems failures; disruptions from internal or external events that result in the degradation or failure of services provided by the payment system; security breaches or cybersecurity events; or payment or settlement delays, constrained liquidity, contagious disruptions, and resulting litigation; and

(5) *Payment system* means ''financial market utility'' as defined in 12 U.S.C. 5462(6), wherever operating, and includes both retail and wholesale payment systems. Payment system does not include a derivatives clearing organization registered under the Commodity Exchange Act, a clearing agency registered under the Securities Exchange Act of 1934, or foreign organization that would be considered a derivatives clearing organization or clearing agency were it operating in the United States.

(c) *Notice requirements*—(1) *Prior notice required.* A national bank or Federal savings association must provide written notice to its appropriate OCC supervisory office at least 30 days prior to joining a payment system that exposes it to open-ended liability.

(2) *After-the-fact notice.* A national bank or Federal savings association must provide written notice to its appropriate OCC supervisory office within 30 days of joining a payment system that does not expose it to open-ended liability.

(d) *Content of notice*—(1) *In general.* A notice required by paragraph (c) of this section must include representations that the national bank or Federal savings association:

(i) Has complied with the safety and soundness review requirements in paragraph (e)(1) of this section; and

(ii) Will comply with the safety and soundness review and notification requirements in paragraphs (e)(2) and (3) of this section.

(2) *Payment system with limits on liability or no liability.* A notice filed under paragraph (c)(2) of this section also must include a representation that either:

(i) The rules of the payment system do not impose liability for operational losses on members; or

(ii) The national bank's or Federal savings association's liability for operational losses is limited by the rules of the payment system to specific and appropriate limits that do not exceed the lower of:

(A) The legal lending limit under 12 CFR part 32; or

(B) The limit set for the bank or savings association by the OCC.

(e) *Safety and soundness procedures.* (1) Prior to joining a payment system, a national bank or Federal savings association must:

(i) Identify and evaluate the risks posed by membership in the payment system, taking into account whether the liability of the bank or savings association is limited; and

(ii) Ensure that it can measure, monitor, and control the risks identified pursuant to paragraph (e)(1)(i) of this section.

(2) After joining a payment system, a national bank or Federal savings association must manage the risks of the payment system on an ongoing basis. This ongoing risk management must:

(i) Identify and evaluate the risks posed by membership in the payment system, taking into account whether the liability of the bank or savings association is limited; and

(ii) Measure, monitor, and control the risks identified pursuant to paragraph (e)(2)(i) of this section.

(3) If the national bank or Federal savings association identifies risks during the ongoing risk management required by paragraph (e)(2) of this section that raise safety and soundness concerns, such as a material change to the bank's or savings association's liability or indemnification responsibilities, the national bank or Federal savings association must:

(i) Notify the appropriate OCC supervisory office as soon as the safety and soundness concern is identified; and

(ii) Take appropriate actions to remediate the risk.

(4) A national bank or Federal savings association that believes its open-ended liability is otherwise limited (*e.g.*, by negotiated agreements or laws of an appropriate jurisdiction) may consider its liability to be limited for purposes of the reviews required by paragraphs (e)(1) and (2) of this section so long as:

(i) Prior to joining the payment system, the bank or savings association obtains a written legal opinion that:

(A) Describes how the payment system allocates liability for operational losses; and

(B) Concludes the potential liability for operational losses for the national bank or Federal savings association is in fact limited to specific and appropriate limits that do not exceed the lower of:

(*1*) The legal lending limit under 12 CFR part 32; or

(*2*) The limit set for the bank or savings association by the OCC; and

(ii) There are no material changes to the liability or indemnification requirements applicable to the bank or savings association since the issuance of the written legal opinion.

(f) *Safety and soundness considerations.* (1) A national bank or Federal savings association should evaluate, at a minimum, the following payment system characteristics when conducting an analysis required by paragraph (e) of this section:

(i) Does the processing occur on a real-time gross settlement basis or provide reasonable assurance (*e.g.*, prefunding, etc.) that members will meet settlement obligations?

(ii) How does the payment system's rules limit its liability to members?

(iii) Does the payment system have insurance coverage and/or self-insurance arrangements to cover operational losses?

(iv) Do the payment system's rules provide an unambiguous pro-rata loss allocation methodology under its indemnity provisions and does the methodology provide members the opportunity to reduce or eliminate liability exposure by decreasing or ceasing use of the payment system?

(v) Do the payment system's rules provide for unambiguous membership withdrawal procedures that do not require the prior approval of the system?

(vi) Does the payment system have appropriate admission and continuing participation requirements for system

participants? Such requirements should address, among other things:

(A) The participants' access to sufficient financial resources to meet obligations arising from participation;

(B) The adequacy of participants' operational capacities to meet obligations arising from participation; and

(C) The adequacy of the participants' own risk management processes.

(vii) Does the payment system have processes and controls in place to verify and monitor on an ongoing basis the compliance of each participant with admission and participation requirements?

(viii) Does the payment system have written policies and procedures for addressing participant failures to meet ongoing participation requirements?

(ix) Are the payment system's rules relating to the system's emergency authorities unambiguous and may they be amended or otherwise altered without prior notification to all members and an opportunity to withdraw?

(x) Is the payment system governed by uniform, comprehensive and clear legal standards in its operating jurisdiction that address payment and/or settlement activities?

(xi) Is the payment system subject to and in compliance (or observance) with the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (CPSS—IOSCO) Principles for Financial Market Infrastructures?

(xii) Is the payment system designated as a systemically important financial market utility (SIFMU) by the Financial Stability Oversight Counsel (FSOC) or is it the international or foreign equivalent?

(xiii) Does the payment system provide members with information relevant to governance, risk management practices, and operations in a timely manner and with sufficient transparency and particularity for the bank to ascertain with reasonable certainty the bank's level of risk exposure to the system?

(xiv) Is the payment system operated by or subject to oversight of a central bank or regulatory authority?

(xv) Is the payment system legally organized as a not-for-profit enterprise or is it owned and operated by a government entity?

(xvi) Does the payment system have appropriate systems and controls for communicating to members in a timely manner about material events that relate to or could result in potential operational losses, *e.g.* fraud, system failures, natural disasters, etc.?

(xvii) Has the payment system ever exercised its authority under indemnification provisions?

(2) A national bank or Federal savings association should consider, at a minimum, the following characteristics of its risk management program when conducting an analysis required by paragraph (e) of this section:

(i) Does the bank or savings association have appropriate board supervision and managerial and staff expertise?

(ii) Does the bank or savings association have comprehensive policies and operating procedures with respect to its risk identification, measurement and management information systems that are routinely reviewed?

(iii) Does the bank or savings association have effective risk controls and processes to oversee and ensure the continuing effectiveness of the risk management process? The program should include a formal process for approval of payment system memberships as well as ongoing monitoring and measurement of activity against predetermined risk limits.

(iv) Does the bank or savings association's membership evaluation process include assessments and analyses of:

(A) The credit quality of the entity;

(B) The entity's risk management practices;

(C) Settlement and default procedures of the entity;

(D) Any default or loss-sharing precedents and any other applicable limits or restrictions of the entity;

(E) Key risks associated with joining the entity; and

(F) The incremental effect of additional memberships in aggregate exposure to payment system risk?

(v) Does the bank or savings association's risk management program include policies and procedures that

identify and estimate the level of potential operational risks, at both inception of membership and on an ongoing basis?

(vi) Does the bank or savings association have auditing procedures to ensure the integrity of risk measurement, control and reporting systems?

(vii) Does the program include mechanisms to monitor, estimate, and maintain control over the bank or savings association's potential liabilities for operational losses on an ongoing basis. This should include:

(A) Limits and other controls with respect to each identified risk factor;

(B) Reports generated throughout the processes that accurately present the nature and level(s) of risk taken and demonstrate compliance with approved polices and limits; and

(C) Identification of the business unit and/or individuals responsible for measuring and monitoring risk exposures, as well as those individuals responsible for monitoring compliance with policies and risk exposure limits.

(viii) Does a bank or savings association with memberships in multiple payment systems have the ability to monitor and report aggregate risk exposures and measurement against risk limits both at the sponsoring business line level and the total exposure organizationally?

EFFECTIVE DATE NOTE: At 85 FR 83730, Dec. 22, 2020, §7.1026 was added, effective Apr. 1, 2021.

§ 7.1027 Establishment and operation of a remote service unit by a national bank.

A remote service unit (RSU) is an automated or unstaffed facility, operated by a customer of a bank with at most delimited assistance from bank personnel, that conducts banking functions such as receiving deposits, paying withdrawals, or lending money. A national bank may establish and operate an RSU pursuant to 12 U.S.C. 24(Seventh). An RSU includes an automated teller machine, automated loan machine, automated device for receiving deposits, personal computer, telephone, other similar electronic devices, and drop boxes. An RSU may be equipped with a telephone or tele-video device that allows contact with bank personnel. An RSU is not a ''branch'' within the meaning of 12 U.S.C. 36(j), and is not subject to State geographic or operational restrictions or licensing laws.

EFFECTIVE DATE NOTE: At 85 FR 83731, Dec. 22, 2020, §7.1027 was added, effective Apr. 1, 2021.

§ 7.1028 Establishment and operation of a deposit production office by a national bank.

(a) *In general.* A national bank or its operating subsidiary may engage in deposit production activities at a site other than the main office or a branch of the bank. A national bank or its operating subsidiary may solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account at a deposit production office (DPO). A DPO is not a branch within the meaning of 12 U.S.C. 36(j) and 12 CFR 5.30(d)(1) so long as it does not receive deposits, pay withdrawals, or make loans. All deposit and withdrawal transactions of a bank customer using a DPO must be performed by the customer, either in person at the main office or a branch office of the bank, or by mail, electronic transfer, or a similar method of transfer.

(b) *Services of other persons.* A national bank may use the services of, and compensate, persons not employed by the bank in its deposit production activities.

EFFECTIVE DATE NOTE: At 85 FR 83732, Dec. 22, 2020, §7.1028 was added, effective Apr. 1, 2021.

§ 7.1029 Combination of national bank loan production office, deposit production office, and remote service unit.

A location at which a national bank operates a loan production office (LPO), a deposit production office (DPO), and a remote service unit (RSU) is not a ''branch'' within the meaning of 12 U.S.C. 36(j) by virtue of that combination. Since an LPO, DPO, or RSU is not, individually, a branch under 12 U.S.C. 36(j), any combination of these

facilities at one location does not create a branch. The RSU at such a combined location must be primarily operated by the customer with at most delimited assistance from bank personnel.

EFFECTIVE DATE NOTE: At 85 FR 83732, Dec. 22, 2020, §7.1029 was added, effective Apr. 1, 2021.

§ 7.1030 Permissible derivatives activities for national banks.

(a) *Authority*. This section is issued pursuant to 12 U.S.C. 24(Seventh). A national bank may only engage in derivatives transactions in accordance with the requirements of this section.

(b) *Definitions*. For purposes of this section:

(1) *Customer-driven* means a transaction is entered into for a customer's valid and independent business purpose (and a customer-driven transaction does not include a transaction the principal purpose of which is to deliver to a national bank assets that the national bank could not invest in directly);

(2) *Perfectly-matched* means two back-to-back derivatives transactions that offset risk with respect to all economic terms (*e.g.*, amount, maturity, duration, and underlying);

(3) *Portfolio-hedged* means a portfolio of derivatives transactions that are hedged based on net unmatched positions or exposures in the portfolio;

(4) *Physical hedging* or *physically-hedged* means holding title to or acquiring ownership of an asset (for example, by warehouse receipt or book-entry) solely to manage the risks arising out of permissible customer-driven derivatives transactions;

(5) *Physical settlement* or *physically-settled* means accepting title to or acquiring ownership of an asset;

(6) *Transitory title transfer* means accepting and immediately relinquishing title to an asset; and

(7) *Underlying* means the reference asset, rate, obligation, or index on which the payment obligation(s) between counterparties to a derivative transaction is based.

(c) *In general*. A national bank may engage in the following derivatives transactions after notice in accordance with paragraph (d) of this section, as applicable:

(1) Derivatives transactions with payments based on underlyings a national bank is permitted to purchase directly as an investment;

(2) Derivatives transactions with any underlying to hedge the risks arising from bank-permissible activities;

(3) Derivatives transactions as a financial intermediary with any underlying that are customer-driven, cash-settled, and either perfectly-matched or portfolio-hedged;

(4) Derivatives transactions as a financial intermediary with any underlying that are customer-driven, physically-settled by transitory title transfer, and either perfectly-matched or portfolio-hedged; and

(5) Derivatives transactions as a financial intermediary with any underlying that are customer-driven, physically-hedged, and either portfolio-hedged or hedged on a transaction-by-transaction basis, and provided that:

(i) The national bank does not take physical delivery of any commodity by receipt of physical quantities of the commodity on bank premises; and

(ii) Physical hedging activities meet the requirements of paragraph (e) of this section.

(d) *Notice procedure*. (1) A national bank must provide notice to its Examiner-in-Charge prior to engaging in any of the following with respect to derivatives transactions with payments based on underlyings that a national bank is not permitted to purchase directly as an investment:

(i) Engaging in derivatives hedging activities pursuant to paragraph (c)(2) of this section;

(ii) Expanding the bank's derivatives hedging activities pursuant to paragraph (c)(2) of this section to include a new category of underlying for derivatives transactions;

(iii) Engaging in customer-driven financial intermediation derivatives activities pursuant to paragraph (c)(3), (4), or (5) of this section; and

(iv) Expanding the bank's customer-driven financial intermediation derivatives activities pursuant to paragraph (c)(3), (4), or (5) of this section to include any new category of underlyings.

(2) The notice pursuant to paragraph (d)(1) of this section must be submitted in writing at least 30 days before the national bank commences the activity and include the following information:

(i) A detailed description of the proposed activity, including the relevant underlyings;

(ii) The anticipated start date of the activity; and

(iii) A detailed description of the bank's risk management system (policies, processes, personnel, and control systems) for identifying, measuring, monitoring, and controlling the risks of the activity.

(e) *Additional requirements for physical hedging activities.* (1) A national bank engaging in physical hedging activities pursuant to paragraph (c)(5) of this section must hold the underlying solely to hedge risks arising from derivatives transactions originated by customers for the customers' valid and independent business purposes.

(2) The physical hedging activities must offer a cost-effective means to hedge risks arising from permissible banking activities.

(3) The national bank must not take anticipatory or maintain residual positions in the underlying except as necessary for the orderly establishment or unwinding of a hedging position.

(4) The national bank must not acquire equity securities for hedging purposes that constitute more than 5 percent of a class of voting securities of any issuer.

(5) With respect to physical hedging involving commodities:

(i) A national bank's physical position in a particular physical commodity (including, as applicable, delivery point, purity, grade, chemical composition, weight, and size) must not be more than 5 percent of the gross notional value of the bank's derivatives that are in that particular physical commodity and allow for physical settlement within 30 days. Title to commodities acquired and immediately sold by a transitory title transfer does not count against the 5 percent limit;

(ii) The physical position must more effectively reduce risk than a cash-settled hedge referencing the same commodity; and

(iii) The physical position hedges a physically-settled customer-driven commodity derivative transaction(s).

(f) *Safe and sound banking practices.* A national bank must adhere to safe and sound banking practices in conducting the activities described in this section. The bank must have a risk management system (policies, processes, personnel, and control system) that effectively manages (identifies, measures, monitors, and controls) these activities' interest rate, credit, liquidity, price, operational, compliance, and strategic risks.

EFFECTIVE DATE NOTE: At 85 FR 83732, Dec. 22, 2020, § 7.1030 was added, effective Apr. 1, 2021.

§ 7.1031 National banks and Federal savings associations as lenders.

(a) For purposes of this section, *bank* means a national bank or a Federal savings association.

(b) For purposes of sections 5136 and 5197 of the Revised Statutes (12 U.S.C. 24 and 12 U.S.C. 85), section 24 of the Federal Reserve Act (12 U.S.C. 371), and sections 4(g) and 5(c) of the Home Owners' Loan Act (12 U.S.C. 1463(g) and 12 U.S.C. 1464(c)), a bank makes a loan when the bank, as of the date of origination:

(1) Is named as the lender in the loan agreement; or

(2) Funds the loan.

(c) If, as of the date of origination, one bank is named as the lender in the loan agreement for a loan and another bank funds that loan, the bank that is named as the lender in the loan agreement makes the loan.

[85 FR 68747, Oct. 30, 2020]

Subpart B—Corporate Practices

§ 7.2000 Corporate governance procedures.

(a) *General.* A national bank proposing to engage in a corporate governance procedure shall comply with applicable Federal banking statutes and regulations, and safe and sound banking practices.

(b) *Other sources of guidance.* To the extent not inconsistent with applicable Federal banking statutes or regulations, or bank safety and soundness, a

national bank may elect to follow the corporate governance procedures of the law of the state in which the main office of the bank is located, the law of the state in which the holding company of the bank is incorporated, the Delaware General Corporation Law, Del. Code Ann. tit. 8 (1991, as amended 1994, and as amended thereafter), or the Model Business Corporation Act (1984, as amended 1994, and as amended thereafter). A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.

(c) *No-objection procedures.* The OCC also considers requests for its staff's position on the ability of a national bank to engage in a particular corporate governance procedure in accordance with the no-objection procedures set forth in Banking Circular 205 or any subsequently published agency procedures.[2] Requests should demonstrate how the proposed practice is not inconsistent with applicable Federal statutes or regulations, and is consistent with safe and sound banking practices.

[61 FR 4862, Feb. 9, 1996, as amended at 79 FR 15641, Mar. 21, 2014; 80 FR 28471, May 18, 2015]

EFFECTIVE DATE NOTE: At 85 FR 83733, Dec. 22, 2020, §7.2000 was amended, effective Apr. 1, 2021, by:

a. Revising the section heading and paragraph (a);

b. In paragraph (b):

i. Removing the word ''procedures'' wherever it appears and adding in its place the word ''provisions'';

ii. Removing the phrase ''the state in which the main office of the bank'' and adding in its place the phrase ''any State in which the main office or any branch of the bank'';

iii. Removing the phrase ''the state in which the holding company of the bank'' and adding in its place the phrase ''any State in which a holding company of the bank''; and

iv. Removing the word ''shall'' and adding in its place the word ''must'';

d. Redesignating paragraph (c) as paragraph (d) and revising it; and

e. Adding a new paragraph (c).

For the convenience of the user, the added and revised text is set forth as follows:

[2]Available upon request from the OCC Communications Division, 400 7th Street SW., Washington, DC 20219, (202) 649–6700.

§ 7.2000 National bank corporate governance.

(a) *In general.* The corporate governance provisions in a national bank's articles of association and bylaws and the bank's conduct of its corporate governance affairs must comply with applicable Federal banking statutes and regulations and safe and sound banking practices.

* * * * *

(c) *Continued use of former holding company State.* A national bank that has elected to follow the corporate governance provisions of the law of the State in which its holding company is incorporated may continue to use those provisions even if the bank is no longer controlled by that holding company.

(d) *Request for OCC staff position.* A national bank may request the views of OCC staff on the permissibility of a national bank's adoption of a particular State corporate governance provision. Requests must include the following information:

(1) The name of the national bank;

(2) Citation to the State statutes or regulations involved;

(3) A discussion as to whether a similarly situated State bank is subject to or may adopt the corporate governance provision;

(4) Identification of all Federal banking statutes or regulations that are on the same subject as, or otherwise have a bearing on, the subject of the proposed State corporate governance provision; and

(5) An analysis of how the proposed practice is not inconsistent with applicable Federal statutes or regulations and is not inconsistent with bank safety and soundness.

§ 7.2001 National bank adoption of anti-takeover provisions.

(a) *In general.* Pursuant to §7.2000(b), a national bank may adopt anti-takeover provisions included in State corporate governance law if the provisions are not inconsistent with Federal banking statutes or regulations and not inconsistent with bank safety and soundness.

(b) *State anti-takeover provisions that are not inconsistent with Federal banking statutes or regulations.* State anti-takeover provisions that are not inconsistent with Federal banking statutes or regulations include the following:

(1) *Restrictions on business combinations with interested shareholders.* State provisions that prohibit, or that permit the corporation to prohibit in its certificate of incorporation or other governing document, the corporation from engaging in a business combination

with an interested shareholder or any related entity for a specified period of time from the date on which the shareholder first becomes an interested shareholder, subject to certain exceptions such as board approval. An interested shareholder is one that owns an amount of stock specified in the State provision.

(2) *Poison pill.* State provisions that provide, or that permit the corporation to provide in its certificate of incorporation or other governing document, that all the shareholders, other than the hostile acquiror, have the right to purchase additional stock at a substantial discount upon the occurrence of a triggering event.

(3) *Requiring all shareholder actions to be taken at a meeting.* State provisions that provide, or that permit the corporation to provide in its certificate of incorporation or other governing document, that all actions to be taken by shareholders must occur at a meeting and that shareholders may not take action by written consent.

(4) *Limits on shareholders' authority to call special meetings.* State provisions that provide, or that permit the corporation to provide in its certificate of incorporation or other governing document, that:

(i) Only the board of directors, and not the shareholders, have the right to call special meetings of the shareholders; or

(ii) If shareholders have the right to call special meetings, a high percentage of shareholders is needed to call the meeting.

(5) *Shareholder removal of a director only for cause.* State provisions that provide, or that permit the corporation to provide in its certificate of incorporation or other governing document, that shareholders may remove a director only for cause, and not both for cause and without cause.

(c) *State anti-takeover provisions that are inconsistent with Federal banking statutes or regulations.* The following State anti-takeover provisions are inconsistent with Federal banking statutes or regulations:

(1) *Supermajority voting requirements.* State provisions that require, or that permit the corporation to require in its certificate of incorporation or other governing document, a supermajority of the shareholders to approve specified matters are inconsistent when applied to matters for which Federal banking statutes or regulations specify the required level of shareholder approval.

(2) *Restrictions on a shareholder's right to vote all the shares it owns.* State provisions that prohibit, or that permit the corporation in its certificate of incorporation or other governing document to prohibit, a person from voting shares acquired that increase their percentage of ownership of the company's stock above a certain level are inconsistent when applied to shareholder votes governed by 12 U.S.C. 61.

(d) *Bank safety and soundness*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, any State corporate governance provision, including anti-takeover provisions, that would render more difficult or discourage an injection of capital by purchase of bank stock, a merger, the acquisition of the bank, a tender offer, a proxy contest, the assumption of control by a holder of a large block of the bank's stock, or the removal of the incumbent board of directors or management is inconsistent with bank safety and soundness if:

(i) The bank is less than adequately capitalized (as defined in 12 CFR part 6);

(ii) The bank is in troubled condition (as defined in 12 CFR 5.51(c)(7));

(iii) Grounds for the appointment of a receiver under 12 U.S.C. 191, as determined by the OCC, are present; or

(iv) The bank is otherwise in less than satisfactory condition, as determined by the OCC.

(2) *Exception.* Anti-takeover provisions are not inconsistent with bank safety and soundness if, at the time the bank adopts the provisions:

(i) The bank is not subject to any of the conditions in paragraph (d)(1) of this section; and

(ii) The bank includes, in its articles of association or its bylaws, as applicable pursuant to paragraph (f) of this section, a limitation that would make the provisions ineffective if:

(A) The conditions in paragraph (d)(1) of this section exist; or

(B) The OCC otherwise directs the bank not to follow the provision for supervisory reasons.

(e) *Case-by-case review*—(1) *OCC determination.* Based on the substance of the provision or the individual circumstances of a national bank, the OCC may determine that a State anti-takeover provision, as proposed or adopted by a bank, is:

(i) Inconsistent with Federal banking statutes or regulations, notwithstanding paragraph (b) of this section; or

(ii) Inconsistent with bank safety and soundness other than as provided in paragraph (d) of this section.

(2) *Review.* The OCC may initiate a review, or a bank may request OCC review pursuant to §7.2000(d), of a State anti-takeover provision.

(f) *Method of adoption for anti-takeover provisions*—(1) *Board and shareholder approval.* A national bank must follow the provisions for approval by the board of directors and approval of shareholders for the adoption of an anti-takeover provision in the State corporate governance law it has elected to follow. However, if the provision is included in the bank's articles of association, the bank's shareholders must approve the amendment of the articles pursuant to 12 U.S.C. 21a, even if the State law does not require approval by the shareholders.

(2) *Documentation.* If the State corporate governance law requires the anti-takeover provision to be in the company's articles of incorporation, certificate of incorporation, or similar document, the national bank must include the provision in its articles of association. If the State corporate governance law does not require the provision to be in the company's articles of incorporation, certificate of incorporation, or similar document, but allows it to be in the bylaws, then the national bank must include the provision in either its articles of association or in its bylaws, provided, however, that if the State corporate governance law requires shareholder approval for changes to the corporation's bylaws, then the national bank must include the provision in its articles of association.

EFFECTIVE DATE NOTE: At 85 FR 83733, Dec. 22, 2020, §7.2001 was added, effective Apr. 1, 2021.

§ 7.2002 Director or attorney as proxy.

Any person or group of persons, except the bank's officers, clerks, tellers, or bookkeepers, may be designated to act as proxy. The bank's directors or attorneys may act as proxy if they are not also employed as an officer, clerk, teller or bookkeeper of the bank.

EFFECTIVE DATE NOTE: At 85 FR 83734, Dec. 22, 2020, §7.2002 was amended, effective Apr. 1, 2021, by:

a. Revising the section heading;

b. Removing the word ''bank's'' and adding in its place the phrase ''national bank's'' wherever it appears; and

c. Adding the phrase ''for shareholder voting'' after the word ''proxy'' wherever it appears.

For the convenience of the user, the revised text is set forth as follows:

§ 7.2002 National bank director or attorney as proxy.

* * * * *

§ 7.2003 Shareholder meetings; Board of directors meetings.

(a) *Notice of shareholders' meetings.* A national bank must mail shareholders notice of the time, place, and purpose of all shareholders' meetings at least 10 days prior to the meeting by first class mail, unless the OCC determines that an emergency circumstance exists. Where a national bank is a wholly-owned subsidiary, the sole shareholder is permitted to waive notice of the shareholder's meeting. The articles of association, bylaws, or law applicable to a national bank may require a longer period of notice.

(b) *Annual meeting for election of directors.* When the day fixed for the regular annual meeting of the shareholders falls on a legal holiday in the State in which the bank is located, the shareholders' meeting must be held, and the directors elected, on the next following banking day.

(c) *Virtual participation at shareholder meetings*—(1) *In general.* A national bank may provide for telephonic or electronic participation at shareholder meetings.

(2) *Procedures.* A national bank must follow the procedures for telephonic or

electronic participation in a shareholder meeting of the corporate governance procedures it has elected to follow pursuant to §7.2000(b), if those elected procedures include telephonic or electronic participation procedures; the Delaware General Corporation Law, Del. Code Ann. Tit. 8 (1991, as amended 1994, and as amended thereafter); or the Model Business Corporation Act, provided, however, that such procedures are not inconsistent with applicable Federal statutes and regulations and safety and soundness. The national bank must indicate the use of these procedures in its bylaws.

(d) *Virtual participation at board of directors meetings.* A national bank may provide for telephonic or electronic participation at a meeting of its board of directors.

[85 FR 31949, May 28, 2020]

EFFECTIVE DATE NOTE: At 85 FR 83734, Dec. 22, 2020, §7.2003 was revised, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.2003 National bank shareholder meetings; Board of directors meetings.

(a) *Notice of shareholders' meetings.* A national bank must mail shareholders notice of the time, place, and purpose of all shareholders' meetings at least 10 days prior to the meeting by first class mail, unless the OCC determines that an emergency circumstance exists. Where a national bank is a wholly-owned subsidiary, the sole shareholder is permitted to waive notice of the shareholder's meeting. The articles of association, bylaws, or law applicable to a national bank may require a longer period of notice.

(b) *Annual meeting for election of directors.* When the day fixed for the regular annual meeting of the shareholders falls on a legal holiday in the State in which the bank is located, the shareholders' meeting must be held, and the directors elected, on the next following banking day.

(c) *Virtual participation at shareholder meetings*—(1) *In general.* A national bank may provide for telephonic or electronic participation at shareholder meetings.

(2) *Procedures.* A national bank must follow the procedures for telephonic or electronic participation in a shareholder meeting of the corporate governance provisions it has elected to follow pursuant to §7.2000(b), if those elected provisions include telephonic or electronic participation procedures; the Delaware General Corporation Law, Del. Code Ann. Tit. 8 (1991, as amended 1994, and as amended thereafter); or the Model Business Corporation Act, provided, however, that such procedures are not inconsistent with applicable Federal statutes and regulations and safety and soundness. The national bank must indicate the use of these procedures in its bylaws.

(d) *Virtual participation at board of directors meetings.* A national bank may provide for telephonic or electronic participation at a meeting of its board of directors.

§ 7.2004 Honorary directors or advisory boards.

A national bank may appoint honorary or advisory members of a board of directors to act in advisory capacities without voting power or power of final decision in matters concerning the business of the bank. Any listing of honorary or advisory directors must distinguish between them and the bank's board of directors or indicate their advisory status.

EFFECTIVE DATE NOTE: At 85 FR 83734, Dec. 22, 2020, §7.2004 was amended by revising the section heading, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.2004 Honorary national bank directors or advisory boards.

* * * * *

§ 7.2005 Ownership of stock necessary to qualify as director.

(a) *General.* A national bank director must own a qualifying equity interest in a national bank or a company that has control of a national bank. The director must own the qualifying equity interest in his or her own right and meet a certain minimum threshold ownership.

(b) *Qualifying equity interest*—(1) *Minimum required equity interest.* For purposes of this section, a qualifying equity interest includes common or preferred stock of the bank or of a company that controls the bank that has not less than an aggregate par value of $1,000, an aggregate shareholders' equity of $1,000, or an aggregate fair market value of $1,000.

(i) The value of the common or preferred stock held by a national bank director is valued as of the date purchased or the date on which the individual became a director, whichever value is greater.

(ii) In the case of a company that owns more than one national bank, a director may use his or her equity interest in the controlling company to satisfy, in whole or in part, the equity interest requirement for any or all of the controlled national banks.

(iii) Upon request, the OCC may consider whether other interests in a company controlling a national bank constitute an interest equivalent to $1,000 par value of national bank stock.

(2) *Joint ownership and tenancy in common.* Shares held jointly or as a tenant in common are qualifying shares held by a director in his or her own right only to the extent of the aggregate value of the shares which the director would be entitled to receive on dissolution of the joint tenancy or tenancy in common.

(3) *Shares in a living trust.* Shares deposited by a person in a living trust (inter vivos trust) as to which the person is a trustee and retains an absolute power of revocation are shares owned by the person in his or her own right.

(4) *Other arrangements*—(i) *Shares held through retirement plans and similar arrangements.* A director may hold his or her qualifying interest through a profit-sharing plan, individual retirement account, retirement plan, or similar arrangement, if the director retains beneficial ownership and legal control over the shares.

(ii) *Shares held subject to buyback agreements.* A director may acquire and hold his or her qualifying interest pursuant to a stock repurchase or buyback agreement with a transferring shareholder under which the director purchases the qualifying shares subject to an agreement that the transferring shareholder will repurchase the shares when, for any reason, the director ceases to serve in that capacity. The agreement may give the transferring shareholder a right of first refusal to repurchase the qualifying shares if the director seeks to transfer ownership of the shares to a third person.

(iii) *Assignment of right to dividends or distributions.* A director may assign the right to receive all dividends or distributions on his or her qualifying shares to another, including a transferring shareholder, if the director retains beneficial ownership and legal control over the shares.

(iv) *Execution of proxy.* A director may execute a revocable or irrevocable proxy authorizing another, including a transferring shareholder, to vote his or her qualifying shares, provided the director retains beneficial ownership and legal control over the shares.

(c) *Non-qualifying ownership.* The following are not shares held by a director in his or her own right:

(1) Shares pledged by the holder to secure a loan. However, all or part of the funds used to purchase the required qualifying equity interest may be borrowed from any party, including the bank or its affiliates;

(2) Shares purchased subject to an absolute option vested in the seller to repurchase the shares within a specified period; and

(3) Shares deposited in a voting trust where the depositor surrenders:

(i) Legal ownership (depositor ceases to be registered owner of the stock);

(ii) Power to vote the stock or to direct how it shall be voted; or

(iii) Power to transfer legal title to the stock.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60099, Nov. 4, 1999]

EFFECTIVE DATE NOTE: At 85 FR 83734, Dec. 22, 2020, § 7.2005 was amended, effective Apr. 1, 2021, by:

a. Revising the section heading and the heading in paragraph (a); and

b. Removing in paragraph (c)(3)(ii), the word ''shall'' and adding in its place the word ''must''.

For the convenience of the user, the revised text is set forth as follows:

§ 7.2005 Ownership of stock necessary to qualify as director of a national bank.

(a) *In general.* * * *

* * * * *

§ 7.2006 Cumulative voting in election of directors.

When electing directors, a shareholder shall have as many votes as the number of directors to be elected multiplied by the number of the shareholder's shares. If permitted by the national bank's articles of association, the shareholder may cast all these votes for one candidate or distribute the votes among as many candidates as

the shareholder chooses. If, after the first ballot, subsequent ballots are necessary to elect directors, a shareholder may not vote shares that he or she has already fully cumulated and voted in favor of a successful candidate.

[61 FR 4862, Feb. 9, 1996, as amended at 73 FR 22241, Apr. 24, 2008]

EFFECTIVE DATE NOTE: At 85 FR 83734, Dec. 22, 2020, §7.2006 was amended, effective Apr. 1, 2021, by:

a. Revising the section heading; and

b. In the first sentence, removing the phrase ''When electing directors, a shareholder shall'' and adding in its place the phrase ''When electing national bank directors, a shareholder must''.

For the convenience of the user, the revised text is set forth as follows:

§ 7.2006 Cumulative voting in election of national bank directors.

* * * * *

§ 7.2007 Filling vacancies and increasing board of directors other than by shareholder action.

(a) *Increasing board of directors.* If authorized by the bank's articles of association, between shareholder meetings a majority of the board of directors may increase the number of the bank's directors within the limits specified in 12 U.S.C. 71a. The board of directors may increase the number of directors only by up to two directors, when the number of directors last elected by shareholders was 15 or fewer, and by up to four directors, when the number of directors last elected by shareholders was 16 or more.

(b) *Vacancies.* If a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled by the shareholders, a majority of the board of directors remaining in office, or, if the directors remaining in office constitute fewer than a quorum, by an affirmative vote of a majority of all the directors remaining in office.

EFFECTIVE DATE NOTE: At 85 FR 83735, Dec. 22, 2020, §7.2007 was amended, effective Apr. 1, 2021, by:

a. Revising the section heading;

b. In paragraph (a), adding the word ''national'' before the phrase ''bank's articles of association'' in the first sentence; and

c. In paragraph (b), removing the phrase ''If a vacancy occurs on the board of directors,'' and adding in its place the phrase ''If a vacancy occurs on the national bank's board of directors,''.

For the convenience of the user, the revised text is set forth as follows:

§ 7.2007 Filling vacancies and increasing board of directors of a national bank other than by shareholder action.

* * * * *

§ 7.2008 Oath of directors.

(a) *Administration of the oath.* A notary public, including one who is a director but not an officer of the national bank, may administer the oath of directors. Any person, other than an officer of the bank, having an official seal and authorized by the state to administer oaths, may also administer the oath.

(b) *Execution of the oath.* Each director shall execute either a joint or individual oath at the first meeting of the board of directors that the director attends after the director is appointed or elected. A director shall take another oath upon re-election, notwithstanding uninterrupted service. Appropriate sample oaths may be found in the Charter Booklet of the Comptroller's Licensing Manual available at *www.occ.gov*.

(c) *Filing and recordkeeping.* A national bank must file the original executed oaths of directors with the appropriate OCC licensing office, as defined in 12 CFR 5.3(c), and retain a copy in the bank's records.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60099, Nov. 4, 1999; 82 FR 8104, Jan. 23, 2017]

EFFECTIVE DATE NOTES: 1. At 85 FR 80470, Dec. 11, 2020, §7.2008 was amended in paragraph (c), by removing the phrase ''12 CFR 5.3(c)'' and adding in its place the phrase ''12 CFR 5.3'', effective Jan. 11, 2021.

EFFECTIVE DATE NOTES: 2. At 85 FR 83735, Dec. 22, 2020, §7.2008 was amended, effective Apr. 1, 2021, by:

a. Revising the section heading and paragraph (a); and

b. In paragraph (b):

i. Removing the phrase ''Each director shall execute'' and adding in its place the phrase ''Each national bank director must execute'' in the first sentence; and

ii. Removing the phrase ''A director shall take'' and adding in its place the phrase ''A

national bank director must take'' in the second sentence.

For the convenience of the user, the revised text is set forth as follows:

§ 7.2008 Oath of national bank directors.

(a) *Administration of the oath.* The oath of directors must be administered by:

(1) A notary public, including one who is a director but not an officer of the national bank; or

(2) Any person, including one who is a director but not an officer of the national bank, having an official seal and authorized by the State to administer oaths.

* * * * *

§ 7.2009 Quorum of the board of directors; proxies not permissible.

A national bank shall provide in its articles of association or bylaws that for the transaction of business, a quorum of the board of directors is at least a majority of the entire board then in office. A national bank director may not vote by proxy.

EFFECTIVE DATE NOTE: At 85 FR 83735, Dec. 22, 2020, §7.2009 was amended, effective Apr. 1, 2021, by:

a. Revising the section heading; and

b. Removing the word ''shall'' and adding in its place the word ''must''.

For the convenience of the user, the revised text is set forth as follows:

§ 7.2009 Quorum of a national bank board of directors; proxies not permissible.

* * * * *

§ 7.2010 Directors' responsibilities.

The business and affairs of the bank shall be managed by or under the direction of the board of directors. The board of directors should refer to OCC published guidance for additional information regarding responsibilities of directors.

EFFECTIVE DATE NOTE: At 85 FR 83735, Dec. 22, 2020, §7.2010 was amended, effective Apr. 1, 2021, by:

a. Revising the section heading; and

b. Removing the phrase ''affairs of the bank shall'' and adding in its place the phrase ''affairs of a national bank must'' in the first sentence.

For the convenience of the user, the revised text is set forth as follows:

§ 7.2010 National bank directors' responsibilities.

* * * * *

§ 7.2011 Compensation plans.

Consistent with safe and sound banking practices and the compensation provisions of 12 CFR part 30, a national bank may adopt compensation plans, including, among others, the following:

(a) *Bonus and profit-sharing plans.* A national bank may adopt a bonus or profit-sharing plan designed to ensure adequate remuneration of bank officers and employees.

(b) *Pension plans.* A national bank may provide employee pension plans and make reasonable contributions to the cost of the pension plan.

(c) *Employee stock option and stock purchase plans.* A national bank may provide employee stock option and stock purchase plans.

EFFECTIVE DATE NOTE: At 85 FR 83735, Dec. 22, 2020, §7.2011 was amended by revising the section heading, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.2011 National bank compensation plans.

* * * * *

§ 7.2012 President as director; chief executive officer.

Pursuant to 12 U.S.C. 76, the president of a national bank must be a member of the board of directors, but a director other than the president may be elected chairman of the board. A person other than the president may serve as chief executive officer, and this person is not required to be a director of the bank.

EFFECTIVE DATE NOTE: At 85 FR 83735, Dec. 22, 2020, §7.2012 was revised, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.2012 President as director of a national bank.

Pursuant to 12 U.S.C. 76, the person serving as, or in the function of, president of a national bank, regardless of title, must be a member of the board of directors. A director other than the person serving as, or in the function of, president may be elected chairman of the board.

§ 7.2013 Fidelity bonds covering officers and employees.

(a) *Adequate coverage.* All officers and employees of a national bank or Federal savings association must have adequate fidelity bond coverage. The failure of directors to require bonds with adequate sureties and in sufficient amount may make the directors liable for any losses that the bank or savings association sustains because of the absence of such bonds. Directors should not serve as sureties on such bonds. Directors should consider whether agents who have access to assets of the bank or savings association should also have fidelity bond coverage.

(b) *Factors.* The board of directors of the national bank or Federal savings association, or a committee thereof, must determine the amount of such coverage, premised upon a consideration of factors, including:

(1) Internal auditing safeguards employed;

(2) Number of employees;

(3) Amount of deposit liabilities; and

(4) Amount of cash and securities normally held by the bank or savings association.

[61 FR 4862, Feb. 9, 1996, as amended at 82 FR 8104, Jan. 23, 2017]

EFFECTIVE DATE NOTE: At 85 FR 83735, Dec. 22, 2020, § 7.2013 was amended by revising the section heading, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.2013 Fidelity bonds covering national bank officers and employees.

* * * * *

§ 7.2014 Indemnification of institution-affiliated parties.

(a) *Administrative proceedings or civil actions initiated by Federal banking agencies.* A national bank may only make or agree to make indemnification payments to an institution-affiliated party with respect to an administrative proceeding or civil action initiated by any Federal banking agency, that are reasonable and consistent with the requirements of 12 U.S.C. 1828(k) and the implementing regulations thereunder. The term ''institution-affiliated party'' has the same meaning as set forth at 12 U.S.C. 1813(u).

(b) *Administrative proceeding or civil actions not initiated by a Federal banking agency*—(1) *General.* In cases involving an administrative proceeding or civil action not initiated by a Federal banking agency, a national bank may indemnify an institution-affiliated party for damages and expenses, including the advancement of expenses and legal fees, in accordance with the law of the state in which the main office of the bank is located, the law of the state in which the bank's holding company is incorporated, or the relevant provisions of the Model Business Corporation Act (1984, as amended 1994, and as amended thereafter), or Delaware General Corporation Law, Del. Code Ann. tit. 8 (1991, as amended 1994, and as amended thereafter), provided such payments are consistent with safe and sound banking practices. A national bank shall designate in its bylaws the body of law selected for making indemnification payments under this paragraph.

(2) *Insurance premiums.* A national bank may provide for the payment of reasonable premiums for insurance covering the expenses, legal fees, and liability of institution-affiliated parties to the extent that the expenses, fees, or liability could be indemnified under paragraph (b)(1) of this section.

EFFECTIVE DATE NOTE: At 85 FR 83735, Dec. 22, 2020, § 7.2014 was revised, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.2014 Indemnification of national bank and Federal savings association institution-affiliated parties.

(a) *Indemnification under State law.* Subject to the limitations of paragraph (b) of this section, a national bank or Federal savings association may indemnify an institution-affiliated party for damages and expenses, including the advancement of expenses and legal fees, in accordance with the law of the State the bank or savings association has designated for its corporate governance pursuant to § 7.2000(b) (for national banks), 12 CFR 5.21(j)(3)(ii) (for Federal mutual savings associations), or 12 CFR 5.22(j)(2)(ii) (for Federal stock savings associations), provided such payments are consistent with safe and sound banking practices. The term ''institution-affiliated party'' has the same meaning as set forth at 12 U.S.C. 1813(u).

(b) *Administrative proceedings or civil actions initiated by Federal banking agencies.* With respect to an administrative proceeding or civil action initiated by any Federal banking agency, a national bank or Federal savings association may only make or agree to make indemnification payments to an institution-affiliated party that are reasonable and consistent with the requirements of 12 U.S.C. 1828(k) and 12 CFR chapter III.

(c) *Written agreement required for advancement.* Before advancing funds to an institutional-affiliated party under this section, a national bank or Federal savings association must obtain a written agreement that the institution-affiliated party will reimburse the bank or savings association, as appropriate, for any portion of that indemnification that the institution-affiliated party is ultimately found not to be entitled to under 12 U.S.C. 1828(k) and 12 CFR chapter III, except to the extent that the bank's or savings association's expenses have been reimbursed by an insurance policy or fidelity bond.

(d) *Insurance premiums.* A national bank or Federal savings association may provide for the payment of reasonable premiums for insurance covering the expenses, legal fees, and liability of institution-affiliated parties to the extent that the expenses, fees, or liability could be indemnified under this section.

§ 7.2015 Cashier.

A national bank's bylaws, board of directors, or a duly designated officer may assign some or all of the duties previously performed by the bank's cashier to its president, chief executive officer, or any other officer.

EFFECTIVE DATE NOTE: At 85 FR 83735, Dec. 22, 2020, § 7.2015 was amended by revising the section heading, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.2015 National bank cashier.

* * * * *

§ 7.2016 Restricting transfer of stock and record dates.

(a) *Conditions for stock transfer.* Under 12 U.S.C. 52, a national bank may impose conditions upon the transfer of its stock reasonably calculated to simplify the work of the bank with respect to stock transfers, voting at shareholders' meetings, and related matters and to protect it against fraudulent transfers.

(b) *Record dates.* A national bank may close its stock records for a reasonable period to ascertain shareholders for voting purposes. The board of directors may fix a record date for determining the shareholders entitled to notice of, and to vote at, any meeting of shareholders. The record date should be in reasonable proximity to the date that notice is given to the shareholders of the meeting.

EFFECTIVE DATE NOTE: At 85 FR 83735, Dec. 22, 2020, § 7.2016 was amended, effective Apr. 1, 2021, by:

a. Revising the section heading;

b. Redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (2), respectively, and adding a heading for paragraph (a); and

c. Adding a new paragraph (b).

For the convenience of the user, the added and revised text is set forth as follows:

§ 7.2016 Restricting transfer of national bank stock and record dates; stock certificates.

(a) *Restricting transfer of stock and record dates*—* * *

(b) *Bank stock certificates.* (1) A national bank may prescribe the manner in which its stock must be transferred in its bylaws or articles of association. A bank issuing stock in certificated form must comply with the requirements of 12 U.S.C. 52, including as to:

(i) The name and location of the bank;

(ii) The name of the holder of record of the stock represented thereby;

(iii) The number and class of shares which the certificate represents;

(iv) If the bank issues more than one class of stock, the respective rights, preferences, privileges, voting rights, powers, restrictions, limitations, and qualifications of each class of stock issued (unless incorporated by reference to the articles of association);

(v) Signatures of the president and cashier of the bank, or such other officers as the bylaws of the bank provide; and

(vi) The seal of the bank.

(2) The requirements of paragraph (b)(1)(v) of this section may be met through the use of electronic means or by facsimile.

§ 7.2017 Facsimile signatures on bank stock certificates.

The president and cashier, or other officers authorized by the bank's bylaws, shall sign each national bank stock certificate. The signatures may be manual or facsimile, including electronic means of signature. Each certificate must be sealed with the seal of the association.

EFFECTIVE DATE NOTE: At 85 FR 83735, Dec. 22, 2020, § 7.2017 was removed, effective Apr. 1, 2021.

§ 7.2018 Lost stock certificates.

If a national bank does not provide for replacing lost, stolen, or destroyed stock certificates in its articles of association or bylaws, the bank may adopt procedures in accordance with § 7.2000.

EFFECTIVE DATE NOTE: At 85 FR 83735, Dec. 22, 2020, § 7.2018 was removed, effective Apr. 1, 2021.

§ 7.2019 Loans secured by a bank's own shares.

(a) *Permitted agreements, relating to bank shares.* A national bank may require a borrower holding shares of the bank to execute agreements:

(1) Not to pledge, give away, transfer, or otherwise assign such shares;

(2) To pledge such shares at the request of the bank when necessary to prevent loss; and

(3) To leave such shares in the bank's custody.

(b) *Use of capital notes and debentures.* A national bank may not make loans secured by a pledge of the bank's own capital notes and debentures. Such notes and debentures must be subordinated to the claims of depositors and other creditors of the issuing bank, and are, therefore, capital instruments within the purview of 12 U.S.C. 83.

EFFECTIVE DATE NOTE: At 85 FR 83736, Dec. 22, 2020, § 7.2019 was amended by revising the section heading, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.2019 Loans secured by a national bank's own shares.

* * * * *

§ 7.2020 Acquisition and holding of shares as treasury stock.

(a) *Acquisition of outstanding shares.* Pursuant to 12 U.S.C. 59, including the requirements for prior approval by the bank's shareholders and the OCC imposed by that statute, a national bank may acquire its outstanding shares and hold them as treasury stock, if the acquisition and retention of the shares is, and continues to be, for a legitimate corporate purpose.

(b) *Legitimate corporate purpose.* Examples of legitimate corporate purposes include the acquisition and holding of treasury stock to:

(1) Have shares available for use in connection with employee stock option, bonus, purchase, or similar plans;

(2) Sell to a director for the purpose of acquiring qualifying shares;

(3) Purchase a director's qualifying shares upon the cessation of the director's service in that capacity if there is no ready market for the shares;

(4) Reduce the number of shareholders in order to qualify as a Subchapter S corporation; and

(5) Reduce costs associated with shareholder communications and meetings.

(c) *Prohibition.* It is not a legitimate corporate purpose to acquire or hold treasury stock on speculation about changes in its value.

[64 FR 60099, Nov. 4, 1999]

EFFECTIVE DATE NOTE: At 85 FR 83736, Dec. 22, 2020, § 7.2020 was removed, effective Apr. 1, 2021.

§ 7.2021 Preemptive rights.

A national bank in its articles of association must grant or deny preemptive rights to the bank's shareholders. Any amendment to a national bank's articles of association which modifies such preemptive rights must be approved by a vote of the holders of two-thirds of the bank's outstanding voting shares.

EFFECTIVE DATE NOTE: At 85 FR 83736, Dec. 22, 2020, § 7.2021 was amended by revising the section heading, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.2021 National bank preemptive rights.

* * * * *

§ 7.2022 Voting trusts.

The shareholders of a national bank may establish a voting trust under the applicable law of a state selected by the participants and designated in the trust agreement, provided the implementation of the trust is consistent with safe and sound banking practices.

EFFECTIVE DATE NOTE: At 85 FR 83736, Dec. 22, 2020, § 7.2022 was amended, effective Apr. 1, 2021, by:

a. Revising the section heading; and

b. Removing the word ''state'' and adding in its place the word ''State''.

For the convenience of the user, the revised text is set forth as follows:

§ 7.2022 National bank voting trusts.

* * * * *

§ 7.2023 Reverse stock splits.

(a) *Authority to engage in reverse stock splits.* A national bank may engage in a reverse stock split if the transaction serves a legitimate corporate purpose and provides adequate dissenting shareholders' rights.

(b) *Legitimate corporate purpose.* Examples of legitimate corporate purposes include a reverse stock split to:

(1) Reduce the number of shareholders in order to qualify as a Subchapter S corporation; and

(2) Reduce costs associated with shareholder communications and meetings.

[64 FR 60099, Nov. 4, 1999]

EFFECTIVE DATE NOTE: At 85 FR 83736, Dec. 22, 2020, § 7.2023 was amended by revising the section heading, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.2023 National bank reverse stock splits.

* * * * *

§ 7.2024 Staggered terms for national bank directors and size of bank board.

(a) *Staggered terms.* Any national bank may adopt bylaws that provide for staggering the terms of its directors. National banks shall provide the OCC with copies of any bylaws so amended.

(b) *Maximum term.* Any national bank director may hold office for a term that does not exceed three years.

(c) *Number of directors.* A national bank's board of directors shall consist of no fewer than 5 and no more than 25 members. A national bank may, after notice to the OCC, increase the size of its board of directors above the 25 member limit. A national bank seeking to increase the number of its directors must notify the OCC any time the proposed size would exceed 25 directors. The bank's notice shall specify the reason(s) for the increase in the size of the board of directors beyond the statutory limit.

[68 FR 70131, Dec. 17, 2003]

EFFECTIVE DATE NOTE: At 85 FR 83736, Dec. 22, 2020, § 7.2024 was amended in paragraphs (a) and (c) by removing the word ''shall'' and adding in its place the word ''must'' wherever it appears, effective Apr. 1, 2021.

§ 7.2025 Capital stock-related activities of a national bank.

(a) *In general.* A national bank must obtain the necessary shareholder approval required by 12 U.S.C. 51a, 57, or 59 for any change in its permanent capital. An increase or decrease in the amount of a national bank's common or preferred stock is a change in permanent capital subject to the notice and approval requirements of 12 CFR 5.46 and applicable law. A national bank may obtain the required shareholder approval of changes in permanent capital, as provided in paragraphs (b), (c), and (d) of this section.

(b) *Issuance of previously approved and authorized common stock.* In compliance with 12 U.S.C. 57, a national bank may issue common stock up to an amount previously approved and authorized in the national bank's articles of association by holders of two-thirds of the national bank's shares without obtaining additional shareholder approval for each subsequent issuance within the authorized amount.

(c) *Issuance, repurchase, and redemption of preferred stock pursuant to certain procedures.* Subject to the requirements of 12 U.S.C. 51a and 59, a national bank may adopt procedures to authorize the board of directors to issue, determine the terms of, repurchase, and redeem one or more series of preferred stock, if permitted by the corporate governance provisions adopted by the bank under § 7.2000. To satisfy the shareholder approval requirements of 12 U.S.C. 51a and 59, the adoption of such procedures must be approved by shareholders in advance through an amendment to the national bank's articles of association. Any amendment to a national bank's articles of association that authorizes both the issuance and the repurchase and redemption of shares must be approved by holders of two-thirds of the national bank's shares.

(d) *Share repurchase programs.* Subject to the requirements of 12 U.S.C. 59, a national bank may establish a program for the repurchase, from time to time, of the national bank's common or preferred stock, if permitted by the corporate governance provisions adopted by the bank under §7.2000. To satisfy the shareholder approval requirement of 12 U.S.C. 59, the repurchase program must be approved in advance by the holders of two-thirds of the national bank's shares, including through an amendment to the national bank's articles of association that authorizes the board of directors to repurchase the national bank's common or preferred stock from time to time under board-determined parameters that can limit the frequency, type, aggregate limit, or purchase price of repurchases.

(e) *Preferred Stock Features.* A national bank's preferred stock may be cumulative or non-cumulative and may or may not have voting rights on one or more series.

EFFECTIVE DATE NOTE: At 85 FR 83736, Dec. 22, 2020, §7.2025 was added, effective Apr. 1, 2021.

Subpart C—National Bank and Federal Savings Association Operations

§ 7.3000 National bank hours and closings.

(a) *Bank hours.* A national bank's board of directors should review its banking hours, and, independently of any other bank, take appropriate action to establish a schedule of banking hours.

(b) *Emergency closings.* Pursuant to 12 U.S.C. 95(b)(1), the Comptroller of the Currency (Comptroller), a state, or a legally authorized state official may declare a day a legal holiday if emergency conditions exist. That day is a legal holiday for national banks or their offices in the affected geographic area (*i.e.*, throughout the country, in a state, or in part of a state). Emergency conditions include natural disasters and civil and municipal emergencies (*e.g.*, severe flooding, or a power emergency declared by a local power company or government requesting that businesses in the affected area close). The Comptroller issues a proclamation authorizing the emergency closing in accordance with 12 U.S.C. 95 at the time of the emergency condition, or soon thereafter. When the Comptroller, a State, or a legally authorized State official declares a legal holiday due to emergency conditions, a national bank may temporarily limit or suspend operations at its affected offices. Alternatively, the national bank may continue its operations unless the Comptroller by written order directs otherwise.

(c) *Ceremonial closings.* A state or a legally authorized state official may declare a day a legal holiday for ceremonial reasons. When a state or a legally authorized state official declares a day to be a legal holiday for ceremonial reasons, a national bank may choose to remain open or to close.

(d) *Liability.* A national bank should assure that all liabilities or other obligations under the applicable law due to the bank's closing are satisfied.

[61 FR 4862, Feb. 9, 1996, as amended at 66 FR 34791, July 2, 2001]

EFFECTIVE DATE NOTE: At 85 FR 83736, Dec. 22, 2020, §7.3000 was revised, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.3000 National bank and Federal savings association operating hours and closings.

(a) *Operating hours.* The board of directors of a national bank or Federal savings association, or an equivalent person or committee of a Federal branch or agency, should review its hours of operations for customers and, independently of any other bank, savings association, or Federal branch or agency, take appropriate action to establish a schedule of operating hours for customers.

(b) *Emergency closings declared by the Comptroller.* Pursuant to 12 U.S.C. 95(b)(1) and 1463(a)(1)(A), the Comptroller of the Currency (Comptroller), may declare any day a legal holiday if emergency conditions exist. That day is a legal holiday for national banks, Federal savings associations, and Federal branches or agencies in the affected geographic area (*i.e.*, throughout the United States, in a State, or in part of a State), and national banks, Federal savings associations, and Federal branches and agencies may temporarily limit or suspend operations at their affected offices, unless the Comptroller by written order directs otherwise. Emergency conditions may be caused by acts of nature or of man and may include natural and other disasters, public health or safety emergencies, civil and municipal emergencies,

and cyber threats or other unauthorized intrusions (*e.g.*, severe flooding, a pandemic, terrorism, a cyber-attack on bank systems, or a power emergency declared by a local power company or government requesting that businesses in the affected area close). The Comptroller may issue a proclamation authorizing the emergency closing in anticipation of the emergency condition, at the time of the emergency condition, or soon thereafter. In the absence of a Comptroller declaration of a bank holiday, a national bank, Federal savings associations, or Federal branch or agency may choose to temporarily close offices in response to an emergency condition. The national bank, Federal savings associations, or Federal branch or agency should notify the OCC of such temporary closure as soon as feasible.

(c) *Emergency and ceremonial closings declared by a State or State official.* In the event a State or a legally authorized State official declares any day to be a legal holiday for emergency or ceremonial reasons in that State or part of the State, that same day is a legal holiday for national banks, Federal savings associations, and Federal branches or agencies or their offices in the affected geographic area. National banks, Federal savings associations, and Federal branches or agencies or their affected offices may close their affected offices or remain open on such a State-designated holiday, unless the Comptroller by written order directs otherwise.

(d) *Liability.* A national bank, Federal savings association, or Federal branch or agency should assure that all liabilities or other obligations under the applicable law due to its closing are satisfied.

(e) *Definition.* For the purpose of this subpart, the term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

§ 7.3001 Sharing national bank or Federal association space and employees.

(a) *Sharing space.* A national bank or Federal savings association may:

(1) Lease excess space on national bank or Federal savings association premises to one or more other businesses (including other financial institutions);

(2) Share space jointly held with one or more other businesses; or

(3) Offer its services in space owned by or leased to other businesses.

(b) *Sharing employees.* When sharing space with other businesses as described in paragraph (a) of this section, a national bank or Federal savings association may provide, under one or more written agreements between the national bank or Federal savings association, the other businesses, and their employees, that:

(1) A national bank or Federal savings association employee may act as agent for the other business; or

(2) An employee of the other business may act as agent for the national bank or Federal savings association.

(c) *Supervisory conditions.* When a national bank or Federal savings association engages in arrangements of the types listed in paragraphs (a) and (b) of this section, the national bank or Federal savings association shall ensure that:

(1) The other business is conspicuously, accurately, and separately identified;

(2) Shared employees clearly and fully disclose the nature of their agency relationship to customers of the national bank or Federal savings association and of the other businesses so that customers will know the identity of the national bank, Federal savings association, or other business that is providing the product or service;

(3) The arrangement does not constitute a joint venture or partnership with the other business under applicable state law;

(4) All aspects of the relationship between the national bank or Federal savings association and the other business are conducted at arm's length, unless a special arrangement is warranted because the other business is a subsidiary of the national bank or Federal savings association;

(5) Security issues arising from the activities of the other business on the premises are addressed;

(6) The activities of the other business do not adversely affect the safety and soundness of the national bank or Federal savings association;

(7) The shared employees or the entity for which they perform services are duly licensed or meet qualification requirements of applicable statutes and regulations pertaining to agents or employees of such other business; and

(8) The assets and records of the parties are segregated.

(d) *Other legal requirements.* When entering into arrangements of the types described in paragraphs (a) and (b) of this section, and in conducting operations pursuant to those arrangements, a national bank or Federal savings association must ensure that each arrangement complies with all applicable laws and regulations. If the arrangement involves an affiliate or a shareholder, director, officer or employee of the national bank or Federal savings association:

(1) The national bank or Federal savings association must ensure compliance with all applicable statutory and regulatory provisions governing national bank or Federal savings association transactions with these persons or entities;

(2) The parties must comply with all applicable fiduciary duties; and

(3) The parties, if they are in competition with each other, must consider limitations, if any, imposed by applicable antitrust laws.

(e) *Transition.* If, on May 18, 2015, a Federal savings association shares space or employees with another business under an agreement that complies with the legal requirements that were in effect prior to May 18, 2015, but which would violate any provision of this section, the Federal savings association may continue sharing under the existing agreement but it may not amend, renew, or extend the agreement without prior approval of the appropriate OCC supervisory office.

[80 FR 28471, May 18, 2015]

EFFECTIVE DATE NOTE: At 85 FR 83737, Dec. 22, 2020, §7.3001 was amended, effective Apr. 1, 2021, by:

a. In paragraph (a)(1), removing the phrase ''Lease excess space'' and adding in its place the phrase ''Consistent with §7.1024, lease excess space'';

b. In paragraph (c) introductory text, removing the word ''shall'' and adding in its place the word ''must''; and

c. In paragraph (c)(3), removing the word ''state'' and adding in its place the word ''State''.

Subpart D—Preemption

§ 7.4000 Visitorial powers with respect to national banks.

(a) *General rule.* (1) Under 12 U.S.C. 484, only the OCC or an authorized representative of the OCC may exercise visitorial powers with respect to national banks. State officials may not exercise visitorial powers with respect to national banks, such as conducting examinations, inspecting or requiring the production of books or records of national banks, or prosecuting enforcement actions, except in limited circumstances authorized by federal law. However, production of a bank's records (other than non-public OCC information under 12 CFR part 4, subpart C) may be required under normal judicial procedures.

(2) For purposes of this section, visitorial powers include:

(i) Examination of a bank;

(ii) Inspection of a bank's books and records;

(iii) Regulation and supervision of activities authorized or permitted pursuant to federal banking law; and

(iv) Enforcing compliance with any applicable Federal or state laws concerning those activities, including through investigations that seek to ascertain compliance through production of non-public information by the bank, except as otherwise provided in paragraphs (a), (b), and (c) of this section.

(3) Unless otherwise provided by Federal law, the OCC has exclusive visitorial authority with respect to the content and conduct of activities authorized for national banks under Federal law.

(b) *Exclusion.* In accordance with the decision of the Supreme Court in *Cuomo* v. *Clearing House Assn., L. L. C.*, 129 S. Ct. 2710 (2009), an action against a national bank in a court of appropriate jurisdiction brought by a state attorney general (or other chief law enforcement officer) to enforce an applicable law against a national bank and to seek relief as authorized by such law is not an exercise of visitorial powers under 12 U.S.C. 484.

(c) *Exceptions to the general rule.* Under 12 U.S.C. 484, the OCC's exclusive visitorial powers are subject to the following exceptions:

(1) *Exceptions authorized by Federal law.* National banks are subject to such visitorial powers as are provided by Federal law. Examples of laws vesting visitorial power in other governmental

entities include laws authorizing state or other Federal officials to:

(i) Inspect the list of shareholders, provided that the official is authorized to assess taxes under state authority (12 U.S.C. 62; this section also authorizes inspection of the shareholder list by shareholders and creditors of a national bank);

(ii) Review, at reasonable times and upon reasonable notice to a bank, the bank's records solely to ensure compliance with applicable state unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with those laws (12 U.S.C. 484(b));

(iii) Verify payroll records for unemployment compensation purposes (26 U.S.C. 3305(c));

(iv) Ascertain the correctness of Federal tax returns (26 U.S.C. 7602);

(v) Enforce the Fair Labor Standards Act (29 U.S.C. 211); and

(vi) Functionally regulate certain activities, as provided under the Gramm-Leach-Bliley Act, Pub. L. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

(2) *Exception for courts of justice.* National banks are subject to such visitorial powers as are vested in the courts of justice. This exception pertains to the powers inherent in the judiciary.

(3) *Exception for Congress.* National banks are subject to such visitorial powers as shall be, or have been, exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

(d) *Report of examination.* The report of examination made by an OCC examiner is designated solely for use in the supervision of the bank. The bank's copy of the report is the property of the OCC and is loaned to the bank and any holding company thereof solely for its confidential use. The bank's directors, in keeping with their responsibilities both to depositors and to shareholders, should thoroughly review the report. The report may be made available to other persons only in accordance with the rules on disclosure in 12 CFR part 4.

[61 FR 4862, Feb. 9, 1996, as amended at 64 FR 60100, Nov. 4, 1999; 69 FR 1904, Jan. 13, 2004; 76 FR 43565, July 21, 2011]

§ 7.4001 Charging interest by national banks at rates permitted competing institutions; charging interest to corporate borrowers.

(a) *Definition.* The term ''interest'' as used in 12 U.S.C. 85 includes any payment compensating a creditor or prospective creditor for an extension of credit, making available of a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. It includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates, late fees, creditor-imposed not sufficient funds (NSF) fees charged when a borrower tenders payment on a debt with a check drawn on insufficient funds, overlimit fees, annual fees, cash advance fees, and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports.

(b) *Authority.* A national bank located in a state may charge interest at the maximum rate permitted to any state-chartered or licensed lending institution by the law of that state. If state law permits different interest charges on specified classes of loans, a national bank making such loans is subject only to the provisions of state law relating to that class of loans that are material to the determination of the permitted interest. For example, a national bank may lawfully charge the highest rate permitted to be charged by a state-licensed small loan company, without being so licensed, but subject to state law limitations on the size of loans made by small loan companies.

(c) *Effect on state definitions of interest.* The Federal definition of the term ''interest'' in paragraph (a) of this section does not change how interest is defined by the individual states (nor how the state definition of interest is used) solely for purposes of state law. For example, if late fees are not ''interest'' under state law where a national bank is located but state law permits its most favored lender to charge late fees, then a national bank

located in that state may charge late fees to its intrastate customers. The national bank may also charge late fees to its interstate customers because the fees are interest under the Federal definition of interest and an allowable charge under state law where the national bank is located. However, the late fees would not be treated as interest for purposes of evaluating compliance with state usury limitations because state law excludes late fees when calculating the maximum interest that lending institutions may charge under those limitations.

(d) *Usury*. A national bank located in a state the law of which denies the defense of usury to a corporate borrower may charge a corporate borrower any rate of interest agreed upon by a corporate borrower.

(e) *Transferred loans*. Interest on a loan that is permissible under 12 U.S.C. 85 shall not be affected by the sale, assignment, or other transfer of the loan.

[61 FR 4862, Feb. 9, 1996, as amended at 66 FR 34791, July 2, 2001; 85 FR 33536, June 2, 2020]

§ 7.4002 National bank charges.

(a) *Authority to impose charges and fees*. A national bank may charge its customers non-interest charges and fees, including deposit account service charges.

(b) *Considerations*. (1) All charges and fees should be arrived at by each bank on a competitive basis and not on the basis of any agreement, arrangement, undertaking, understanding, or discussion with other banks or their officers.

(2) The establishment of non-interest charges and fees, their amounts, and the method of calculating them are business decisions to be made by each bank, in its discretion, according to sound banking judgment and safe and sound banking principles. A national bank establishes non-interest charges and fees in accordance with safe and sound banking principles if the bank employs a decision-making process through which it considers the following factors, among others:

(i) The cost incurred by the bank in providing the service;

(ii) The deterrence of misuse by customers of banking services;

(iii) The enhancement of the competitive position of the bank in accordance with the bank's business plan and marketing strategy; and

(iv) The maintenance of the safety and soundness of the institution.

(c) *Interest*. Charges and fees that are ''interest'' within the meaning of 12 U.S.C. 85 are governed by §7.4001 and not by this section.

(d) *State law*. The OCC applies preemption principles derived from the United States Constitution, as interpreted through judicial precedent, when determining whether State laws apply that purport to limit or prohibit charges and fees described in this section.

(e) *National bank as fiduciary*. This section does not apply to charges imposed by a national bank in its capacity as a fiduciary, which are governed by 12 CFR part 9.

[66 FR 34791, July 2, 2001]

§ 7.4003 Establishment and operation of a remote service unit by a national bank.

A remote service unit (RSU) is an automated facility, operated by a customer of a bank, that conducts banking functions, such as receiving deposits, paying withdrawals, or lending money. A national bank may establish and operate an RSU pursuant to 12 U.S.C. 24(Seventh). An RSU includes an automated teller machine, automated loan machine, automated device for receiving deposits, personal computer, telephone, and other similar electronic devices. An RSU may be equipped with a telephone or televideo device that allows contact with bank personnel. An RSU is not a ''branch'' within the meaning of 12 U.S.C. 36(j), and is not subject to state geographic or operational restrictions or licensing laws.

[64 FR 60100, Nov. 4, 1999, as amended at 80 FR 28472, May 18, 2015]

EFFECTIVE DATE NOTE: At 85 FR 83737, Dec. 22, 2020, §7.4003 was removed, effective Apr. 1, 2021.

§ 7.4004 Establishment and operation of a deposit production office by a national bank.

(a) *General rule*. A national bank or its operating subsidiary may engage in deposit production activities at a site other than the main office or a branch of the bank. A deposit production office

(DPO) may solicit deposits, provide information about deposit products, and assist persons in completing application forms and related documents to open a deposit account. A DPO is not a branch within the meaning of 12 U.S.C. 36(j) and 12 CFR 5.30(d)(1) so long as it does not receive deposits, pay withdrawals, or make loans. All deposit and withdrawal transactions of a bank customer using a DPO must be performed by the customer, either in person at the main office or a branch office of the bank, or by mail, electronic transfer, or a similar method of transfer.

(b) *Services of other persons.* A national bank may use the services of, and compensate, persons not employed by the bank in its deposit production activities.

[64 FR 60100, Nov. 4, 1999]

EFFECTIVE DATE NOTE: At 85 FR 83737, Dec. 22, 2020, § 7.4004 was removed, effective Apr. 1, 2021.

§ 7.4005 Combination of national bank loan production office, deposit production office, and remote service unit.

A location at which a national bank operates a loan production office (LPO), a deposit production office (DPO), and a remote service unit (RSU) is not a ''branch'' within the meaning of 12 U.S.C. 36(j) by virtue of that combination. Since an LPO, DPO, or RSU is not, individually, a branch under 12 U.S.C. 36(j), any combination of these facilities at one location does not create a branch.

[64 FR 60100, Nov. 4, 1999]

EFFECTIVE DATE NOTE: At 85 FR 83737, Dec. 22, 2020, § 7.4005 was removed, effective Apr. 1, 2021.

§ 7.4006 [Reserved]

§ 7.4007 Deposit-taking by national banks.

(a) *Authority of national banks.* A national bank may receive deposits and engage in any activity incidental to receiving deposits, including issuing evidence of accounts, subject to such terms, conditions, and limitations prescribed by the Comptroller of the Currency and any other applicable Federal law.

(b) *Applicability of state law.* A national bank may exercise its deposit-taking powers without regard to state law limitations concerning:

(1) Abandoned and dormant accounts;[3]

(2) Checking accounts;

(3) Disclosure requirements;

(4) Funds availability;

(5) Savings account orders of withdrawal;

(6) State licensing or registration requirements (except for purposes of service of process); and

(7) Special purpose savings services;[4]

(c) *State laws that are not preempted.* State laws on the following subjects are not inconsistent with the deposit-taking powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.* 517 U.S. 25 (1996):

(1) Contracts;

(2) Torts;

(3) Criminal law;[5]

(4) Rights to collect debts;

(5) Acquisition and transfer of property;

(6) Taxation;

(7) Zoning; and

(8) Any other law that the OCC determines to be applicable to national banks in accordance with the decision

[3] This does not apply to state laws of the type upheld by the United States Supreme Court in *Anderson Nat'l Bank* v. *Luckett,* 321 U.S. 233 (1944), which obligate a national bank to ''pay [deposits] to the persons entitled to demand payment according to the law of the state where it does business.'' *Id.* at 248–249.

[4] State laws purporting to regulate national bank fees and charges are addressed in 12 CFR 7.4002.

[5] But see the distinction drawn by the Supreme Court in *Easton* v. *Iowa,* 188 U.S. 220, 238 (1903), where the Court stated that ''[u]ndoubtedly a state has the legitimate power to define and punish crimes by general laws applicable to all persons within its jurisdiction * * *. But it is without lawful power to make such special laws applicable to banks organized and operating under the laws of the United States.'' *Id.* at 239 (holding that Federal law governing the operations of national banks preempted a state criminal law prohibiting insolvent banks from accepting deposits).

of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.* 517 U.S. 25 (1996), or that is made applicable by Federal law.

[69 FR 1916, Jan. 13, 2004, as amended at 76 FR 43565, July 21, 2011]

§ 7.4008 Lending by national banks.

(a) *Authority of national banks.* A national bank may make, sell, purchase, participate in, or otherwise deal in loans and interests in loans that are not secured by liens on, or interests in, real estate, subject to such terms, conditions, and limitations prescribed by the Comptroller of the Currency and any other applicable Federal law.

(b) *Standards for loans.* A national bank shall not make a consumer loan subject to this §7.4008 based predominantly on the bank's realization of the foreclosure or liquidation value of the borrower's collateral, without regard to the borrower's ability to repay the loan according to its terms. A bank may use any reasonable method to determine a borrower's ability to repay, including, for example, the borrower's current and expected income, current and expected cash flows, net worth, other relevant financial resources, current financial obligations, employment status, credit history, or other relevant factors.

(c) *Unfair and deceptive practices.* A national bank shall not engage in unfair or deceptive practices within the meaning of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), and regulations promulgated thereunder in connection with loans made under this §7.4008.

(d) *Applicability of state law.* A national bank may make non-real estate loans without regard to state law limitations concerning:

(1) Licensing, registration (except for purposes of service of process), filings, or reports by creditors;

(2) The ability of a creditor to require or obtain insurance for collateral or other credit enhancements or risk mitigants, in furtherance of safe and sound banking practices;

(3) Loan-to-value ratios;

(4) The terms of credit, including the schedule for repayment of principal and interest, amortization of loans, balance, payments due, minimum payments, or term to maturity of the loan, including the circumstances under which a loan may be called due and payable upon the passage of time or a specified event external to the loan;

(5) Escrow accounts, impound accounts, and similar accounts;

(6) Security property, including leaseholds;

(7) Access to, and use of, credit reports;

(8) Disclosure and advertising, including laws requiring specific statements, information, or other content to be included in credit application forms, credit solicitations, billing statements, credit contracts, or other credit-related documents;

(9) Disbursements and repayments; and

(10) Rates of interest on loans.[6]

(e) *State laws that are not preempted.* State laws on the following subjects are not inconsistent with the non-real estate lending powers of national banks and apply to national banks to the extent consistent with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996):

(1) Contracts;

(2) Torts;

(3) Criminal law;[7]

(4) Rights to collect debts;

(5) Acquisition and transfer of property;

(6) Taxation;

(7) Zoning; and

(8) Any other law that the OCC determines to be applicable to national banks in accordance with the decision of the Supreme Court in *Barnett Bank of Marion County, N.A.* v. *Nelson, Florida Insurance Commissioner, et al.*, 517 U.S.

[6] The limitations on charges that comprise rates of interest on loans by national banks are determined under Federal law. *See* 12 U.S.C. 85; 12 CFR 7.4001. State laws purporting to regulate national bank fees and charges that do not constitute interest are addressed in 12 CFR 7.4002.

[7] See *supra* note 5 regarding the distinction drawn by the Supreme Court in *Easton* v. *Iowa,* 188 U.S. 220, 238 (1903).

25 (1996) or that is made applicable by Federal law.

[69 FR 1916, Jan. 13, 2004, as amended at 76 FR 43565, July 21, 2011]

§ 7.4009 [Reserved]

§ 7.4010 Applicability of state law and visitorial powers to Federal savings associations and subsidiaries.

(a) In accordance with section 1046 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b), Federal savings associations and their subsidiaries shall be subject to the same laws and legal standards, including regulations of the OCC, as are applicable to national banks and their subsidiaries, regarding the preemption of state law.

(b) In accordance with section 1047 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1465), the provisions of section 5136C(i) of the Revised Statutes regarding visitorial powers apply to Federal savings associations and their subsidiaries to the same extent and in the same manner as if they were national banks or national bank subsidiaries.

[76 FR 43566, July 21, 2011]

Subpart E—National Bank Electronic Activities

SOURCE: 67 FR 35004, May 17, 2002, unless otherwise noted.

§ 7.5000 Scope.

This subpart applies to a national bank's use of technology to deliver services and products consistent with safety and soundness.

§ 7.5001 Electronic activities that are part of, or incidental to, the business of banking.

(a) *Purpose.* This section identifies the criteria that the OCC uses to determine whether an electronic activity is authorized as part of, or incidental to, the business of banking under 12 U.S.C. 24 (Seventh) or other statutory authority.

(b) *Restrictions and conditions on electronic activities.* The OCC may determine that activities are permissible under 12 U.S.C. 24 (Seventh) or other statutory authority only if they are subject to standards or conditions designed to provide that the activities function as intended and are conducted safely and soundly, in accordance with other applicable statutes, regulations, or supervisory policies.

(c) *Activities that are part of the business of banking.* (1) An activity is authorized for national banks as part of the business of banking if the activity is described in 12 U.S.C. 24 (Seventh) or other statutory authority. In determining whether an electronic activity is part of the business of banking, the OCC considers the following factors:

(i) Whether the activity is the functional equivalent to, or a logical outgrowth of, a recognized banking activity;

(ii) Whether the activity strengthens the bank by benefiting its customers or its business;

(iii) Whether the activity involves risks similar in nature to those already assumed by banks; and

(iv) Whether the activity is authorized for state-chartered banks.

(2) The weight accorded each factor set out in paragraph (c)(1) of this section depends on the facts and circumstances of each case.

(d) *Activities that are incidental to the business of banking.* (1) An electronic banking activity is authorized for a national bank as incidental to the business of banking if it is convenient or useful to an activity that is specifically authorized for national banks or to an activity that is otherwise part of the business of banking. In determining whether an activity is convenient or useful to such activities, the OCC considers the following factors:

(i) Whether the activity facilitates the production or delivery of a bank's products or services, enhances the bank's ability to sell or market its products or services, or improves the effectiveness or efficiency of the bank's operations, in light of risks presented, innovations, strategies, techniques and new technologies for producing and delivering financial products and services; and

(ii) Whether the activity enables the bank to use capacity acquired for its banking operations or otherwise avoid economic loss or waste.

(2) The weight accorded each factor set out in paragraph (d)(1) of this section depends on the facts and circumstances of each case.

(3) In addition to the electronic activities specifically permitted in §7.5004 (sale of excess electronic capacity and by-products) and §7.5006 (incidental non-financial data processing), the OCC has determined that the following electronic activities are incidental to the business of banking, pursuant to this section. This list of activities is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to this authority.

(i) Web site development where incidental to other banking services;

(ii) Internet access and e-mail provided on a non-profit basis as a promotional activity;

(iii) Advisory and consulting services on electronic activities where the services are incidental to customer use of electronic banking services; and

(iv) Sale of equipment that is convenient or useful to customer's use of related electronic banking services, such as specialized terminals for scanning checks that will be deposited electronically by wholesale customers of banks under the Check Clearing for the 21st Century Act, Public Law 108–100 (12 U.S.C. 5001–5018) (the Check 21 Act).

[61 FR 4862, Feb. 9, 1996, as amended at 73 FR 22242, Apr. 24, 2008]

EFFECTIVE DATE NOTE: At 85 FR 83737, Dec. 22, 2020, §7.5001 was revised, effective Apr. 1, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 7.5001 Electronic activities that are incidental to the business of banking.

In addition to the electronic activities specifically permitted in §7.5004 (sale of excess electronic capacity and by-products) and §7.5006 (incidental non-financial data processing), the OCC has determined that the following electronic activities are incidental to the business of banking, pursuant to §7.1000. This list of activities is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to this authority.

(a) Website development where incidental to other banking services;

(b) Internet access and email provided on a non-profit basis as a promotional activity;

(c) Advisory and consulting services on electronic activities where the services are incidental to customer use of electronic banking services; and

(d) Sale of equipment that is convenient or useful to customer's use of related electronic banking services, such as specialized terminals for scanning checks that will be deposited electronically by wholesale customers of banks under the Check Clearing for the 21st Century Act, Public Law 108–100 (12 U.S.C. 5001–5018) (the Check 21 Act).

§ 7.5002 Furnishing of products and services by electronic means and facilities.

(a) *Use of electronic means and facilities.* A national bank may perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that it is otherwise authorized to perform, provide, or deliver, subject to §7.5001(b) and applicable OCC guidance. The following list provides examples of permissible activities under this authority. This list is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to this authority.

(1) Acting as an electronic finder by:

(i) Establishing, registering, and hosting commercially enabled web sites in the name of sellers;

(ii) Establishing hyperlinks between the bank's site and a third-party site, including acting as a ''virtual mall'' by providing a collection of links to web sites of third-party vendors, organized by-product type and made available to bank customers;

(iii) Hosting an electronic marketplace on the bank's Internet web site by providing links to the web sites of third-party buyers or sellers through the use of hypertext or other similar means;

(iv) Hosting on the bank's servers the Internet web site of:

(A) A buyer or seller that provides information concerning the hosted party and the products or services offered or sought and allows the submission of interest, bids, offers, orders and confirmations relating to such products or services; or

(B) A governmental entity that provides information concerning the services or benefits made available by the governmental entity, assists persons in completing applications to receive such services or benefits and permits

persons to transmit their applications for such services or benefits;

(v) Operating an Internet web site that permits numerous buyers and sellers to exchange information concerning the products and services that they are willing to purchase or sell, locate potential counter-parties for transactions, aggregate orders for goods or services with those made by other parties, and enter into transactions between themselves;

(vi) Operating a telephone call center that provides permissible finder services; and

(vii) Providing electronic communications services relating to all aspects of transactions between buyers and sellers;

(2) Providing electronic bill presentment services;

(3) Offering electronic stored value systems;

(4) Safekeeping for personal information or valuable confidential trade or business information, such as encryption keys; and

(5) Issuing electronic letters of credit within the scope of 12 CFR 7.1016.

(b) *Applicability of guidance and requirements not affected.* When a national bank performs, provides, or delivers through electronic means and facilities an activity, function, product, or service that it is otherwise authorized to perform, provide, or deliver, the electronic activity is not exempt from the regulatory requirements and supervisory guidance that the OCC would apply if the activity were conducted by non-electronic means or facilities.

(c) *State laws.* As a general rule, and except as provided by Federal law, State law is not applicable to a national bank's conduct of an authorized activity through electronic means or facilities if the State law, as applied to the activity, would be preempted pursuant to traditional principles of Federal preemption derived from the Supremacy Clause of the U.S. Constitution and applicable judicial precedent. Accordingly, State laws that stand as an obstacle to the ability of national banks to exercise uniformly their Federally authorized powers through electronic means or facilities, are not applicable to national banks.

[61 FR 4862, Feb. 9, 1996, as amended at 73 FR 22242, Apr. 24, 2008]

§ 7.5003 Composite authority to engage in electronic activities.

Unless otherwise prohibited by Federal law, a national bank may engage in an electronic activity that is comprised of several component activities if each of the component activities is itself part of or incidental to the business of banking or is otherwise permissible under Federal law.

§ 7.5004 Sale of excess electronic capacity and by-products.

(a) A national bank may, in order to optimize the use of the bank's resources or avoid economic loss or waste, market and sell to third parties electronic capacities legitimately acquired or developed by the bank for its banking business.

(b) With respect to acquired equipment or facilities, legitimate excess electronic capacity that may be sold to others can arise in a variety of situations, including the following:

(1) Due to the characteristics of the desired equipment or facilities available in the market, the capacity of the most practical optimal equipment or facilities available to meet the bank's requirements exceeds its present needs;

(2) The acquisition and retention of additional capacity, beyond present needs, reasonably may be necessary for planned future expansion or to meet the expected future banking needs during the useful life of the equipment;

(3) Requirements for capacity fluctuate because a bank engages in batch processing of banking transactions or because a bank must have capacity to meet peak period demand with the result that the bank has periods when its capacity is underutilized; and

(4) After the initial acquisition of capacity thought to be fully needed for banking operations, the bank experiences either a decline in level of the banking operations or an increase in the efficiency of the banking operations using that capacity.

(c) Types of electronic capacity in equipment or facilities that banks may have legitimately acquired and that

may be sold to third parties if excess to the bank's needs for banking purposes include:

(1) Data processing services;

(2) Production and distribution of non-financial software;

(3) Providing periodic back-up call answering services;

(4) Providing full Internet access;

(5) Providing electronic security system support services;

(6) Providing long line communications services; and

(7) Electronic imaging and storage.

(d) A national bank may sell to third parties electronic by-products legitimately acquired or developed by the bank for its banking business. Examples of electronic by-products that banks may have legitimately acquired that may be sold to third parties if excess to the bank's needs include:

(1) Software acquired (not merely licensed) or developed by the bank for banking purposes or to support its banking business; and

(2) Electronic databases, records, or media (such as electronic images) developed by the bank for or during the performance of its permissible data processing activities.

§ 7.5005 National bank acting as digital certification authority.

(a) It is part of the business of banking under 12 U.S.C. 24(Seventh) for a national bank to act as a certificate authority and to issue digital certificates verifying the identity of persons associated with a particular public/private key pair. As part of this service, the bank may also maintain a listing or repository of public keys.

(b) A national bank may issue digital certificates verifying attributes in addition to identity of persons associated with a particular public/private key pair where the attribute is one for which verification is part of or incidental to the business of banking. For example, national banks may issue digital certificates verifying certain financial attributes of a customer as of the current or a previous date, such as account balance as of a particular date, lines of credit as of a particular date, past financial performance of the customer, and verification of customer relationship with the bank as of a particular date.

(c) When a national bank issues a digital certificate relating to financial capacity under this section, the bank shall include in that certificate an express disclaimer stating that the bank does not thereby promise or represent that funds will be available or will be advanced for any particular transaction.

§ 7.5006 Data processing.

(a) *Eligible activities.* It is part of the business of banking under 12 U.S.C. 24(Seventh) for a national bank to provide data processing, and data transmission services, facilities (including equipment, technology, and personnel), data bases, advice and access to such services, facilities, data bases and advice, for itself and for others, where the data is banking, financial, or economic data, and other types of data if the derivative or resultant product is banking, financial, or economic data. For this purpose, economic data includes anything of value in banking and financial decisions.

(b) *Other data.* A national bank also may perform the activities described in paragraph (a) of this section for itself and others with respect to additional types of data to the extent convenient or useful to provide the data processing services described in paragraph (a), including where reasonably necessary to conduct those activities on a competitive basis. The total revenue attributable to the bank's data processing activities under this section must be derived predominantly from processing the activities described in paragraph (a) of this section.

(c) *Software for performance of authorized banking functions.* A national bank may produce, market, or sell software that performs services or functions that the bank could perform directly, as part of the business of banking.

[61 FR 4862, Feb. 9, 1996, as amended at 73 FR 22242, Apr. 24, 2008]

§ 7.5007 Correspondent services.

It is part of the business of banking for a national bank to offer as a correspondent service to any of its affiliates or to other financial institutions any service it may perform for itself.

The following list provides examples of electronic activities that banks may offer correspondents under this authority. This list is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to this authority.

(a) The provision of computer networking packages and related hardware;

(b) Data processing services;

(c) The sale of software that performs data processing functions;

(d) The development, operation, management, and marketing of products and processing services for transactions conducted at electronic terminal devices;

(e) Item processing services and related software;

(f) Document control and record keeping through the use of electronic imaging technology;

(g) The provision of Internet merchant hosting services for resale to merchant customers;

(h) The provision of communication support services through electronic means; and

(i) Digital certification authority services.

§ 7.5008 Location of a national bank conducting electronic activities.

A national bank shall not be considered located in a State solely because it physically maintains technology, such as a server or automated loan center, in that state, or because the bank's products or services are accessed through electronic means by customers located in the state.

§ 7.5009 Location under 12 U.S.C. 85 of national banks operating exclusively through the Internet.

For purposes of 12 U.S.C. 85, the main office of a national bank that operates exclusively through the Internet is the office identified by the bank under 12 U.S.C. 22(Second) or as relocated under 12 U.S.C. 30 or other appropriate authority.

§ 7.5010 Shared electronic space.

National banks that share electronic space, including a co-branded web site, with a bank subsidiary, affiliate, or another third-party must take reasonable steps to clearly, conspicuously, and understandably distinguish between products and services offered by the bank and those offered by the bank's subsidiary, affiliate, or the third-party.

PART 8—ASSESSMENT OF FEES

Sec.

AUTHORITY: 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, 3108, and 5412(b)(2)(B); and 15 U.S.C. 78c and 78*l*.

SOURCE: 44 FR 20065, Apr. 4, 1979, unless otherwise noted.

§ 8.1 Scope and application.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, and 3108; and 15 U.S.C. 78c and 78*l*.

[76 FR 43566, July 21, 2011]

§ 8.2 Semiannual assessment.

(a) Each national bank and each Federal savings association shall pay to the OCC a semiannual assessment fee, due by March 31 and September 30 of each year, for the six-month period beginning on January 1 and July 1 before each payment date. The OCC will calculate the amount due under this section and provide a notice of assessments to each national bank and each Federal savings association no later than 7 business days prior to collection on March 31 and September 30 of each year. In setting assessments, the OCC may take into account the nature and scope of the activities of a national bank or Federal savings association, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other factor the OCC determines is appropriate, as provided by 12 U.S.C. 16. The semiannual assessment will be calculated as follows: